United States (H. Doc. No. 24), was taken from the Speaker's table and referred to the Committee on Claims and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. SNELL: Committee on Rules. H. Res. 49. A resolution providing for the consideration of S. 312, census and apportionment; without amendment (Rept. No. 15). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CRAIL: A bill (H. R. 3567) to amend section 209 of the World War veterans' act of 1924, as amended; to the Committee on World War Veterans' Legislation.

By Mr. CRAMTON: A bill (H. R. 3568) to amend section 1 of an act entitled "An act to revise the north, northeast, and east boundaries of the Yellowstone National Park, in the States of Montana and Wyoming, and for other purposes," approved March 1, 1929, being Public Act No. 888, of the Seventieth Congress; to the Committee on the Public Lands.

By Mr. FULMER: A bill (H. R. 3569) to divert lands unsuited for profitable agriculture to productive forestry uses; to the Committee on Agriculture.

By Mr. HILL of Washington: A bill (H. R. 3570) authorizing certain Indian tribes and bands, or any of them, residing in the State of Washington, to present their claims to the Court of Claims; to the Committee on Indian Affairs.

By Mr. SLOAN: A bill (H. R. 3571) appropriating $5,000,000 for the stay of ravages of the corn borer and effecting its ultimate eradication; to the Committee on Appropriations.

Also, a bill (H. R. 3572) to establish a national park on the Daniel Freeman homestead in Gage County, Nebr.; to the Committee on Appropriations.

By Mr. WALKER: A bill (H. R. 3573) to amend subdivision (a) of section 400 and subdivision (a) of section 401 of the revenue act of 1926 reducing the amount of taxes on certain tobacco; to the Committee on Ways and Means.

By Mr. HUDSPETH: A bill (H. R. 3574) to amend an act for the retirement under certain conditions of officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War; to the Committee on World War Veterans' Legislation.

By Mr. CRAMTON: Joint resolution (H. J. Res. 93) amending the provision in the second deficiency act, approved March 4, 1929 (Public, No. 1035), making an appropriation for a consolidated day school at Belcourt within the Turtle Mountain Indian Reservation, N. Dak.; to the Committee on Appropriations.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. CRAIL: A bill (H. R. 3575) for the payment of damages to certain citizens of California caused by reason of artificial obstruction to the natural flow of water being placed in the Picacho and No-name Washes by an agency of the United States; to the Committee on Claims.

By Mr. LOZIER: A bill (H. R. 3576) granting a pension to Martha E. Dennison; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3577) granting an increase of pension to Rachel Fleming; to the Committee on Invalid Pensions.

By Mr. LUDLOW: A bill (H. R. 3578) granting an increase of pension to Martha E. Wilson; to the Committee on Pensions.

By Mr. PALMER: A bill (H. R. 3579) granting an increase of pension to Alice Osborn; to the Committee on Invalid Pensions.

By Mr. PITTENGER: A bill (H. R. 3580) granting a pension to Robert Kelly; to the Committee on Pensions.

By Mr. SLOAN: A bill (H. R. 3581) granting an increase of pension to Marie M. Colby; to the Committee on Pensions.

By Mr. STRONG of Kansas: A bill (H. R. 3582) granting an increase of pension to Thirza C. Spencer; to the Committee on Invalid Pensions.

By Mr. TINKHAM: A bill (H. R. 3583) granting a pension to Leon R. Wilson; to the Committee on Pensions.

Also, a bill (H. R. 3584) granting a pension to Isabella S. Robinson; to the Committee on Pensions.

Also, a bill (H. R. 3585) granting a pension to Elbina L. Poole; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3586) granting a pension to Esther McC. Chapman; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3587) granting a pension to Josephine E. Lang; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

598. Petition of the American Institute of Refrigeration, of New York City, N. Y., memorializing Congress of the United States that the Interstate Commerce Commission be permitted to administer the interstate commerce act; to the Committee on Interstate and Foreign Commerce.

599. Petition of Policemen's Association of the District of Columbia, expressing its deep regret at the loss of the late Hon. John Joseph Casey, and extending its sympathy to his friends and family; to the Committee on the Library.

600. Petition of Printers' Board of Trade of San Francisco, memorializing Congress for a reduction of 50 per cent in the Federal tax on earned incomes; to the Committee on Ways and Means.

601. By Mr. CHALMERS: Petition from the members of the Van Wormer Relief Corps, No. 342, Toledo, Ohio, requesting that the House Committee on Invalid Pensions be organized in order to permit action on the Robinson bill providing for a pension of $50 per month for the widows of the Union veterans of the Civil War at the present session of Congress; to the Committee on Invalid Pensions.

602. By Mr. HOPKINS: Petition of the Missouri River Apple Growers Association, of Troy, Kans., favoring tariff on bananas; to the Committee on Ways and Means.

603. By Mr. LUCE: Petition of Boston business men, urging early and favorable consideration of House bill 11; to the Committee on Interstate and Foreign Commerce.

SENATE

MONDAY, *June 3, 1929*

(Legislative day of Thursday, May 16, 1929)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

The VICE PRESIDENT. The Senate will receive a message from the House of Representatives.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Haltigan, one of its clerks, announced that the House had passed the following joint resolutions, in which it requested the concurrence of the Senate:

H. J. Res. 82. Joint resolution making appropriations for additional compensation for transportation of the mail by railroad routes in accordance with the increased rates fixed by the Interstate Commerce Commission;

H. J. Res. 83. Joint resolution to make available funds for carrying into effect the public resolution of February 20, 1929, as amended, concerning the cessions of certain islands of the Samoan group to the United States; and

H. J. Res. 84. Joint resolution extending until June 30, 1930, the availability of the appropriation for enlarging and relocating the Botanic Garden.

ENROLLED JOINT RESOLUTION SIGNED

The message also announced that the Speaker had affixed his signature to the enrolled joint resolution (S. J. Res. 34) authorizing the Smithsonian Institution to convey suitable acknowledgment to John Gellatly for his offer to the Nation of his art collection, and to include in its estimates of appropriations such sums as may be needful for the preservation and maintenance of the collection, and it was signed by the Vice President.

THE JOURNAL

Mr. JONES. Mr. President, I ask unanimous consent that the Journal for the calendar days of Monday, May 27, to Friday, May 31, inclusive, may be approved.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

OPEN EXECUTIVE SESSIONS—ADDRESS BY SENATOR ROBERT M. LA FOLLETTE

Mr. NORRIS. Mr. President, I ask unanimous consent to have printed in the RECORD an address delivered by Senator

ROBERT M. LA FOLLETTE, of Wisconsin, over the radio, on the evening of the 1st day of June relative to the proposed amendment to the Senate rules relating to executive sessions.

The VICE PRESIDENT. Without objection, it is so ordered.

Senator LA FOLLETTE spoke as follows:

One hundred and forty years since the Constitution went into effect, the Senate of the United States is face to face with this issue:

Shall the Senate transact the public business, while debating and confirming nominees of the President to Federal office, in open or in secret session?

Stripped of its technicalities, that is the naked question involved in the discussions on the Senate floor within the past 10 days. This is no academic question, no mere matter of procedure which concerns the Senate alone. It is of profound importance to all the people of this country. Upon its settlement depends the right of the press to publish information concerning the public business, free from censorship. It involves the right of the people to have that information and to hold their representatives in the Senate to strict accountability for votes cast upon all questions involving the public interest.

I have taken the position that the present rule of secrecy which requires nominations of public officials to be debated and voted upon behind closed doors is a violation of the spirit of the Constitution. It paralyzes any effective opposition to the appointment of unfit men for Federal office. It attempts to destroy the primary responsibility of a Senator to his constituents. It sets up a censorship over the press which never has been and never can be enforced; and it impairs the dignity and the power of a self-respecting legislative body.

In my judgment, this question can only be settled rightly by an amendment to the Senate rules to provide for the fullest publicity for all the proceedings of the Senate and to abolish, root and branch, the system of secrecy. If such an amendment is adopted, we shall witness a change of momentous historic importance in the conduct of the public business at Washington.

ADVANTAGE OF RADIO

I regret that one of the advocates of secrecy is not here to-night to debate this question. It is an admirable feature of this radio forum that it brings into the homes of the people a free discussion of important issues, upon which they have a right to be informed and which they must ultimately decide. I believe in the presentation of both sides of all public questions, in the clash of convictions honestly held, in the "fearless winnowing and sifting of truth" as the surest safeguard of representative democracy.

It is by no means a new question which now confronts the Senate. It is older, indeed, than the American Government itself, for the policy of invoking secrecy in the conduct of the affairs of men is deep-rooted in the past. For centuries it has been defended by some of the boldest and most acute minds among the rulers of earth, and from the time it fastened itself upon the Senate of the United States it has been challenged again and again down to the present hour.

We can not understand the recent case which has come to the attention of the public or the amendment now pending to the rules of the Senate unless we examine the origin of the secrecy system. It did not originate in the Constitution. On the contrary, that document provides that "each House of Congress shall keep a journal of its proceedings, and, from time to time, publish the same." It was only after a close division in the constitutional convention that the House and Senate were given the option, in publishing their proceedings, to omit such parts of the public record as "required secrecy." Within eight days after it first met, the House of Representatives opened its doors to the press and to the people. Since that time the doors of the House have been closed only on rare occasions, and then only during actual war.

FIRST SESSION SECRET

For four years after it first met the Senate transacted all business of every kind and character behind closed doors. The Senate abandoned this practice in 1793 and it was not until 1820 that a rule was adopted providing that all information and debate on nominations submitted by the President should be kept secret. In 1844 the rule providing for expulsion of any Senator disclosing such information was adopted. In 1868, in the period of party passion and strife that followed the Civil War, the secrecy rules were amended and adopted in substantially their present form. They provide that "all information communicated or remarks made by a Senator when acting upon nominations concerning the character or qualifications of the person nominated, also all votes upon any nomination, shall be kept secret."

It was under these rules that the Senate met on May 17, 1929, to consider the qualifications of Irvine L. Lenroot, of Wisconsin, nominated by the President to serve on the Federal bench for life as judge of the United States Court of Customs Appeals.

The doors were closed, the galleries were cleared, newspaper men and all persons except Senators and half a dozen employees were excluded from the floor. Not one word of the debate on May 17, lasting for more than six hours, was taken down. Every argument made against Mr. Lenroot's confirmation was based upon the public record which he had made while in the Senate and since his retirement. Not one word was spoken which could not and should not have been said in open session.

RECORD UNDER FIRE

Here was a nominee for a high judicial position, a former Senator, whose record was properly subject to scrutiny and debate. His record had repeatedly been attacked and defended before the people of his own State, who had rejected him for reelection to the Senate in 1926. Yet the United States Senate on May 17 refused to debate the qualifications of this nominee in the open and confirmed Mr. Lenroot behind closed doors in an office which he will hold for life.

On the following day correspondents sent out broadcast to the newspapers of the country detailed reports of the debate that had taken place in the Senate.

For thus defying the attempted censorship the press is entitled to and should receive the appreciation of the American people.

On May 21 a dispatch distributed by the United Press Association, signed by Mr. Paul R. Mallon, was published in hundreds of newspapers throughout the country purporting to give the roll-call vote taken in the Senate on the confirmation of Mr. Lenroot. An identical roll call was published on the same date in a dispatch of the Universal Service, signed by Mr. Fraser Edwards.

The Rules Committee of the Senate thereupon met in secret session to consider what it deemed a violation of the Senate rules. This committee had not challenged the publication of reports of the debates during secret sessions on this or any previous occasion. By a unanimous vote it brought in a resolution solemnly declaring that a violation of the rules of the Senate had been committed by some Senator or officer of the Senate, and further declaring that such person, unnamed in the resolution, "deserves and should receive severe censure and punishment."

PRESS ASSOCIATION EXCLUDED

At this same session the Committee on Rules unanimously adopted a resolution excluding the United Press Association from the privilege of the floor of the Senate and voted to summon Mr. Mallon, under a subpœna, to compel him to reveal to the committee the sources from which he had obtained the secret roll call of the Senate.

I objected to this proceeding in the Senate on the ground that no newspaper man is bound to respect the rules of the Senate; that in singling out the United Press for punishment by excluding its representative from the floor during public sessions the committee was discriminating against a single correspondent who had performed his duty in the public interest; and that this procedure constituted an attempt by the committee to establish a censorship over the press. The Rules Committee had no authority to curtail or extend the privileges of the floor. In order to prevent this attempted discipline of the United Press I insisted upon the enforcement of the existing rule regarding the privilege of the floor which barred all representatives of the press from the Senate floor. I have offered an amendment to the rules which will accord representatives of the press associations the privilege of the floor without discrimination.

Mr. Mallon appeared before the Rules Committee at an open session held on Monday, May 27. He declined to reveal the sources of his information. He asserted the right of every newspaper man to obtain and every newspaper to print any information pertaining to the proceedings of the Senate, whether conducted in secret or in open sessions.

Following this hearing the Rules Committee voted to amend the secrecy rules of the Senate, and a resolution reported by the committee is now pending on the calendar. It provides in substance that sessions of the Senate for the consideration of nominations may be debated and voted for in open session and that the roll call by which a nomination is confirmed or rejected shall be made public.

CONFLICT AGES OLD

Thus, after 140 years of secrecy in the consideration of an important part of the public business by the Senate, we are making progress in the direction of an enlightened and democratic procedure. Secret or star-chamber sessions of the Senate are relics of the discarded practices of the British Parliament, abandoned more than two centuries ago when the Anglo-Saxon race was struggling to achieve self-government.

The conflict between secrecy and publicity has gone forward through the ages, with men in power asserting their privilege to conceal their acts from the people, and a free press, wherever it has existed in any country in the civilized world, challenging that right and newspaper men often suffering imprisonment to give the people the facts concerning their own representatives and their own government.

On 14 different occasions the effort has been made in the Senate to abolish secrecy, but up until the present time the arguments for public consideration of the public business have not prevailed.

The defense has always been made that by closing the doors on consideration of executive nominations Senators are permitted to discuss freely their objections to a nominee, which could not properly be raised in open session. The argument has been made that such free discussion insures a closer scrutiny of nominees for such offices without subjecting them to charges in public which can not be clearly established by adequate proof.

The complete answer to the argument that secret sessions promote a careful scrutiny of the qualifications of nominees will be found in the

records of recent years. The nominations of Albert B. Fall, Secretary of the Interior; Harry M. Dougherty, Attorney General; Charles R. Forbes, Director of the Veterans' Bureau; and Thomas F. Miller, Alien Property Custodian, were all considered and confirmed in secret sessions of the Senate. Each of these high officials was subsequently indicted, and two of them were convicted and sent to prison after open consideration of their criminal acts in the Federal courts.

DEBATE IN OPEN SESSION

Had these nominations been considered in open session of the Senate, some of them at least would have been fully debated and confirmation strongly opposed. But in these cases the Senate practically abdicated its constitutional duty to advise and consent to nominations submitted by the President, and out of courtesy to the Executive confirmed them without serious consideration.

If the doors of the Senate are opened, I contend that any President will hesitate to submit the nominations of persons whose fitness for office is subject to attack. The consideration of nominations in open session will make Senators strictly accountable to their constituents for their actions upon this important phase of the Senate's constitutional duty.

I do not believe it can be successfully maintained that any man or woman should be placed in public office whose qualifications and character can not stand public scrutiny.

A candidate for President, the office of the greatest dignity and power in our Government, is not spared the scrutiny of his public record and private character. The last campaign certainly demonstrated the truth of that statement. Can it be soberly contended that an appointive official, often a candidate foisted upon the Executive by a powerful political machine in one of the States, shall be permitted to take office without meeting this test?

In my opinion, the Senate has performed a great public service in recent years by fearlessly exposing the secret acts of executive officers of the Government, which no man in or out of the Senate will now defend. The Senate suspected that a Secretary of the Interior, then in office, was bartering the naval oil reserves of the Nation by an illegal system of secret leases. It exposed this crime at public sessions of a Senate committee and freely debated it on the Senate floor. It suspected that an Attorney General, then in office, was guilty of wrongdoing in the conduct of the Department of Justice. The Senate conducted an open investigation of charges against this chief law officer of the Government, and, after long debate in public and after a public roll call, drove him into private life.

The Senate has the power to judge of the acts of the highest officers of the Government, to inquire into those acts in public, and to expose them to the fullest publicity. Why, then, should it not consider the qualifications of men nominated for office, without drawing the veil of secrecy about such proceedings?

UNJUST ATTACKS FEWER

Let us examine more closely this argument that a secret session permits the disclosure of charges against a nominee that can not properly be considered in open session. I can not conceive of any Senator arising in his place to level an unsupported charge impeaching the good name of a nominee, in either open or in secret session. But certainly the temptation to indulge in such attacks would be less if Senators knew that every word uttered would be taken down and become a part of their individual public records.

It has been my experience that the ablest and most carefully prepared debates of the Senate have been conducted in the full light of publicity. That was the case when the Senate in March, 1925, considered in open session the nomination of Charles B. Warren, of Michigan, nominated by President Coolidge for Attorney General. The qualifications of Mr. Warren were carefully sifted, in speeches of signal ability which dealt exclusively with the facts of the public record, not with rumor and hearsay. The nomination was rejected by the margin of a single vote. Had it been considered in secret session, it can scarcely be questioned that the nomination would have been confirmed. In this connection, I venture the assertion that had the nominations of Roy O. West, of Illinois, for Secretary of the Interior, and Irvine L. Lenroot, of Wisconsin, for Federal judge been considered in open session, the majorities for confirmation would have been greatly reduced if not entirely overturned.

This leads to what I regard as the real reason, and a very practical one, for the attempt which has been made since the Warren case to enforce the secrecy rule in all its rigors. It is nothing more or less than an effort to defeat opposition in the Senate against the appointment to high office of men whose connections with special interests render them unfit to serve or whose public records can not be defended in the open. It is an effort to suppress the public expression of objections to such appointments and to conceal the votes cast by Senators on such nominations from their constituents.

RIGHT TO REVEAL VOTE

I have at all times maintained the right to reveal my votes to the people of Wisconsin who elected me, because in my judgment, they have a right to that information. In that regard, I have taken the position of my father, Robert M. La Follette, who was the first in contemporary times to assert the right of an American Senator to reveal his votes upon any nomination and upon all business of the Senate. I can recall the time when he defied the power of the Senate to expel him from that body, under rules which he believed were adopted in violation of the plain terms of the Constitution. He attacked the system of secrecy in all phases of legislation, when he said:

"Evil and corruption thrive best in the dark. Many, if not most, of the acts of legislative dishonesty which have made scandalous the proceedings of Congress and State legislatures could never have reached the first stage had they not been conceived and practically consummated in secret conferences, secret caucuses, secret sessions of committees and then carried through the legislative body with little or no discussion."

The Senate Finance Committee still clings to secret procedure. It now proposes to hold its hearings on the pending tariff bill in secret session. To force public consideration of this most important measure involving billions of dollars and affecting the pocketbook of every American family, I have introduced a resolution directing the committee to open its doors so that people may see what is going on and judge for themselves whether those who are seeking tariff favors are justified in their demands.

I have not undertaken to-night to deal with the Senate rules of secrecy which still exist to control the discussion of treaties with foreign nations behind closed doors. It is unnecessary to do so, because by a majority vote the Senate may decide to consider treaties in open session and the practice of debating treaties in secret has already been abandoned by the Senate on every important treaty submitted to the Senate during the last 10 years. The treaty of Versailles that ended the World War, the World Court protocol, and the Kellogg anti-war pact have all been considered in open sessions.

The last vestige of secrecy in the legislative proceedings of the Federal Government is thus to be found in the rules of the United States Senate. This is no longer a struggling Republic, setting out on a painful and uncertain experiment in the capacity of men to govern themselves. The excuse can no longer be offered by cautious and timid men that we do not have at hand the means of disseminating among the people prompt, reliable, and complete reports of both sides of all public questions that are debated and determined at Washington. These rules can never be enforced. They are in conflict with the whole trend of our times. They are a relic of kingly power that is discredited and abandoned in every country that claims the character of a representative democracy.

The public interest will be served, the true dignity of the Senate will be upheld, the struggle during 140 years by men who believed in democracy and have been ready to fight for it will be vindicated when we have the courage to open the doors of the Senate.

MUSCLE SHOALS

Mr. NORRIS. Mr. President, in accordance with the permission which the Senate gave me last week, I file the report of the Committee on Agriculture and Forestry on Senate Joint Resolution 49, to provide for the national defense by the creation of a corporation for the operation of the Government properties at and near Muscle Shoals, in the State of Alabama, and for other purposes.

The VICE PRESIDENT. The report (No. 19) will be received and printed.

IMPROVEMENT OF INDIAN CONDITIONS IN ARIZONA

Mr. HAYDEN presented letters, etc., submitted by various committees of citizens in favor of the improvement of conditions on Indian reservations and at Indian schools in the State of Arizona, which were referred to the Committee on Printing, with a view to their being printed as a Senate document.

REPORTS OF COMMITTEES

Mr. HALE, from the Committee on Naval Affairs, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (S. 549) to authorize the Secretary of the Navy to proceed with the construction of certain public works, and for other purposes (Rept. No. 20);

A bill (S. 550) to regulate the distribution and promotion of commissioned officers of the line of the Navy, and for other purposes (Rept. No. 21); and

A bill (S. 551) to regulate the distribution and promotion of commissioned officers of the Marine Corps, and for other purposes (Rept. No. 22).

Mr. BROOKHART, from the Committee on Civil Service, to which was referred the bill (S. 215) to amend section 13 of the act of March 4, 1923, entitled "An act to provide for the classification of civilian positions within the District of Columbia and in the field services," as amended by the act of May 28, 1928, reported it without amendment and submitted a report (No. 24) thereon.

PLANNED SETTLEMENT AND SUPERVISED RURAL DEVELOPMENT

Mr. SIMMONS. Mr. President, from the Committee on Irrigation and Reclamation I report back favorably without amendment the bill (S. 412) to authorize the creation of organized rural communities to demonstrate the benefits of planned settlement and supervised rural development, and I submit a report (No. 23) thereon. I ask that the report may be printed in the RECORD.

The VICE PRESIDENT. Without objection, the bill will be placed on the calendar and the report will be printed in the RECORD.

The report is as follows:

[S. Rept. No. 23, 71st Cong., 1st sess.]

CREATION OF ORGANIZED RURAL COMMUNITIES TO DEMONSTRATE THE BENEFITS OF PLANNED SETTLEMENT AND SUPERVISED RURAL DEVELOPMENT

Mr. SIMMONS, from the Committee on Irrigation and Reclamation, submitted the following report (to accompany S. 412):

The Committee on Irrigation and Reclamation, to whom was referred the bill (S. 412) for the creation of organized rural communities to demonstrate the benefits of planned settlement and supervised rural development, having considered the same, report favorably thereon, with the recommendation that the bill do pass.

The main purpose of Senate bill 412, as will be seen from the concluding part of the first section, is to authorize the creation of one organized rural community in each of the following Southern States: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Texas, in order to demonstrate the benefits of planned settlement and supervised rural development.

In certain sections of the States mentioned there has been a marked decadence in agriculture since the Civil War, largely the result of the 1-crop, tenancy system, which has long obtained there and which is apparently on the increase. The evils of this system are apparent and can not be escaped except by a reconstruction of the methods of farming in those sections.

The plan provided by this bill is not a reclamation proposition such as has been applied, in many instances, in the arid regions of the West, where the Government has, by irrigation, reclaimed vast areas of sterile land purchased in the early days of the Republic, and made it productive and sold it to actual settlers upon the plan provided in this bill, greatly to the benefit, not only of the area reclaimed, but, by example, of agriculture in those sections generally.

It is not proposed that the Government shall engage in the business of buying and selling lands, except such as may be needed for purposes of demonstration, such as the Government, through the Agricultural Department, has, by various methods, inaugurated in many sections of the country, with its resultant benefits; and to make this purpose clear the bill provides specifically for only one demonstration scheme in each of the 10 States mentioned in the bill where there is demonstrated necessity of Government intervention in order to correct an evil which has resulted in disaster to agriculture in the sections where these community demonstrations are to be established.

In a good part of the South, especially the Piedmont and industrial sections, where prior to the Civil War the lands were owned in small acreage by those who lived upon them and cultivated them, and are still so owned, there may be no necessity for this demonstration; but in the coastal sections that are still largely agricultural, and where the large plantations, which were cultivated by slave labor prior to the Civil War, are still largely held in single ownership and cultivated chiefly by tenants upon the 1-crop system, it is believed that a demonstration of this sort by the Government would be of very great benefit. It may be that a few farmers would get the main benefit, in the first instance, of long-time payments and cheap money, just as has been the case in the irrigated areas of the West, where the Government irrigated large areas and sold the land on the plan proposed in this demonstration scheme; but in the end the results of this demonstration would inure to the benefit of agriculture throughout the section in which it is applied and lead to the introduction of new and more effective methods for increasing not only productiveness but the value of land, bringing about community concert in matters pertaining to the social, educational, and economic conditions, and adding to the attractiveness of rural life. As stated before, in the coastal sections of the South there has been a decadence in agriculture, while in the industrial sections, where the lands are subdivided in small areas, there has been substantial progress in agricultural methods, followed by diversification, a result not attainable under the present system of 1-crop, tenant farming which obtains in the coastal sections. It is therefore felt that without a reconstruction of the methods which obtain in these rich alluvial regions there can be no escape from present conditions, where there is no market for lands, because, cultivated as they are, they are nonproductive and unsalable. In other words, the hope is that this demonstration may help in substituting for the 1-crop plan diversification and for tenancy ownership by the man who actually occupies the land, together with the bane of absentee ownership measurably reduced, if not entirely eliminated. Not only this, but it is believed that this demonstration of the plan of group settlement and actual ownership will not only correct the structural evils indicated but will bring about a community concert and cooperation which will remove the present condition of farm isolation and make country life in these sections attractive now, as it formerly was.

A brief analysis of the agricultural conditions which now obtain it is confidently believed will be helpful in demonstrating the wisdom and policy of the scheme for promoting a reconstruction of the basis of agriculture provided in the bill.

The nation-wide demand for farm relief shows there is a definite and imperative need of adjusting the balance between city and country life and bringing back to the farm some of the attractions and advantages it once enjoyed. The measure for creating planned farm communities in the South will go far toward accomplishing that result in the section where it is to operate. Its purpose is to help intelligent, industrious people to buy and own the farms they cultivate. These are the people for whom the farm problem must be solved. If better opportunities are not afforded, the attempt to buy and own homes on the land will cease and rural life and agriculture in the South will continue to decay.

In the past we have had great pride in our record as a country where farms were owned by their cultivators. Cheap and free land was a door of opportunity which has contributed to our independence, to our political and social structure. The farmer who owns his home has a sense of permanence and security that can be gained in no other way. He has more interest in things which help build up his community. He takes more interest in roads, churches, and schools, as well as in keeping his farm buildings in repair and maintaining the fertility of his soil.

On the other hand, the high percentage of tenancy makes people migratory and discontented. It leads to neglect and to the adoption of exhaustive methods of tillage. The South has suffered from this and is suffering from it in an unusual measure. To change it this bill proposes to select suitable localities and use some of their surplus capital and expert intelligence to prepare in advance for organized communities based on ownership of the soil and on cooperation in agriculture and business life. Instead of leaving each isolated individual to struggle alone and unaided it is proposed to create associated groups or neighborhoods and to give them the help of our accumulated experience and the greater brain power of superior men.

There is nothing new or untried or unduly paternalistic about this proposal. We will only be doing what Europe has been doing with great success and national advantage for half a century. Under the plan of buying great estates, subdividing and selling them to their farmer tenants or to other experienced cultivators on long-time payments, with low rates of interest, the agriculture and rural life of many countries has been transformed. It is one of the greatest agrarian advances of the last century. When Denmark began to buy land to provide homes for farm laborers and small farmers it was a bankrupt country. The people on the land were discouraged and were leaving for the cities or for other communities. Ninety per cent of its farmers were tenants. To-day 92 per cent of the farms of Denmark are owned by their cultivators. It has become a solvent nation and a teacher of agriculture and business practices to the rest of the world.

What this plan and policy have done for Denmark has been duplicated in other Scandinavian countries, in Germany, and in Italy, and the work started half a century ago has never been abandoned. The policy has succeeded and is still being carried on. The prosperity and peace which Ireland now enjoys had its beginning in the purchase of the estates of nonresident owners and subdividing and selling them to embittered and discouraged tenants. Men without capital could meet their payments because they were given 68 years in which to do this, with a very low rate of interest. Germany, Holland, France, and Italy are all providing land for those who wish to become farm owners, and not only give long-time payments with low rates of interest but provide a credit from which necessary improvements can be made and necessary equipment purchased.

In all those countries favorable terms on the purchase of land have been coupled with the idea of neighborhood association and cooperation. Under it 100 men, each owning 40 acres of land, are enabled to buy and sell on equal terms with 1 man owning 4,000 acres, and this is the surest if not the only way of placing the business of the farm on a sound and efficient basis. It has been proven that tenants are not good cooperators. They have neither the credit nor the sense of permanence which is essential.

This measure has been studied and has the approval of many of the ablest agricultural experts and business leaders of the South. It has been indorsed by broad visioned and experienced men from other sections of the country, like the late Howard Elliott and Daniel C. Roper. The experts of the Reclamation Bureau of the Department of the Interior have made extensive studies of localities submitted to them by the authorities of the Southern States and they have found that the land, the markets, and the climate are all satisfactory for the making of this experiment or demonstration. All that is needed are plans adjusted to the conditions of modern life, credit necessary to enable a man of small means to have a fair chance to succeed, and a definite understanding in advance of the kind of agriculture that is to be followed

and the standards of cultivation and rural life that will prevail to attract the right kind of people and build up a sound, prosperous, and patriotic life on the land.

This measure will accomplish all these things. It needs capital to make a start, just as the Federal land bank needed capital, and all that the bill provides is the loan of this money, to be repaid to the Government with a reasonable rate of interest. It is one of the cheapest, safest, and surest methods of creating examples of the kind of communities we need that can be afforded.

PROVISIONS OF THE BILL

"1. Authority for the preliminary work is lodged in the Interior Department because that is the home-making department of the Government.

"2. The Secretary of the Interior will be authorized to create one organized rural community in each of several Southern States in order to demonstrate planned settlement and rural development.

"3. These communities are to get the benefit of advice and instruction from experts of the Department of Agriculture.

"4. The Secretary of the Interior is authorized to acquire through donation, purchase, or eminent domain an area of land in each State suitable for the purpose and sufficient to create thereon at least 200 farms of such size as will permit of successful farming.

"5. The bill provides that land purchased shall not exceed in price an amount arrived at by a board of three independent appraisers, one appointed by the Secretary of the Interior, one by the Secretary of Agriculture, and one by the head of the agricultural college of the State in which the project is located.

"6. The Department of the Interior shall provide plans for carrying out the development and settlement and the supervision of the work.

"7. Lands shall be sold only to actual settlers of approved qualifications permitting of success as farmers.

"8. Terms of payment shall be no longer than 40 years with interest on deferred payments at the rate of 4 per cent per annum.

"9. For permanent improvements for each farm a sum not to exceed 60 per cent of the value of said improvements may be made available, the maximum on any one farm to be $3,000. Such advances are to be repaid in 56 semiannual installments of 3 per cent of the sum advanced.

"10. All collections are to be returned to the United States Treasury as a credit.

"11. The bill authorizes an appropriation of $12,000,000, of which not exceeding $2,000,000 can be expended in any one State.

SUPPORTING CONSIDERATIONS

"1. The agriculture of the South is a distinct national problem. Ordinary farm relief legislation can not remedy certain factors that menace the very existence of southern rural life.

"2. This bill does not contemplate the reclamation of any waste lands, the drainage of swamps, or the use of land involving expensive preparation.

"3. Neither will it permit the use of unproductive land. Only the better types of soil will be selected.

"4. It introduces no problem of increasing the existing surplus of farm crops. The set-up for each State will be distinct from the others, being governed by the crops and purposes to which the soils and location of each tract is best adapted.

"5. The lands will be acquired at low prices and can be sold to settlers at a mere fraction of what it costs to reclaim land under many western irrigation projects.

"6. The value of the plan has been proven in foreign countries and also in our own country.

"7. It is an effort to create a rural life in the South that will endure and transform a section in which agriculture is sadly decadent into one capable of sustaining a prosperous and happy rural life.

"8. The Federal Government has spent millions of dollars on special agricultural problems of the West. The South has never before asked for Federal aid in its peculiar agricultural problems.

"9. The experience gained in the proposed settlements will demonstrate the way to maintain a satisfying rural life, and will be needed in other sections of the country as time passes.

"The Federal Government has always been generous in its support of agriculture. At the moment its major program is to provide some adequate relief for depressed agriculture.

"But the disposition of surplus production and tariff adjustments of injustices to agriculture are only a part of the problem.

"The millions of dollars spent in reclaiming arid lands of the West attests the interest of the Government in agriculture. All sections of the country have gladly supported these expenditures.

"While western agriculture has been so nursed and fostered by spcial legislation and vast expenditures, the agriculture of the South has been drifting and decaying. We have had the benefit of the general support of agriculture by the Federal Government through the Department of Agriculture, and have shared equally with other sections in all general benefits for agriculture.

"But the South has had little special help to meet her peculiar agricultural problems. We have no arid lands to reclaim, but we have a decaying rural life. We do not want to bring new lands into production.

"What is asked by the proponents of this bill is that the Federal Government provide the financial aid and the services of the Interior Department experts in farm settlement and the Agriculture Department experts in farm methods in an effort to build up a rural life that will save the agriculture of the South."

"The proposed settlements will serve as a laboratory test that will rebound to the benefit of all other sections of the country and to the ultimate and inestimable social and economic advantage of our entire country.

"David Grayson, in his book Adventures in Understanding, says that 'It is not enough to produce steel in a mill. Let's us produce men, because without men we can produce no steel in any mill.' What is true in industry is true in agriculture. It is not enough to produce crops on our farms. We must also produce a satisfying rural life, or eventually we will not have farmers to produce crops."

The quotations above are from a statement prepared by the Associated Committees on Southern Rural Development, entitled "Opening the Way for Men to Become Farm Owners."

This bill is the result of an organized movement in the several States referred to in the bill in the hope of starting a movement that will result in a reconstruction of methods in the sections of these several States where conditions demand a radical change.

In the hearings before the committee on this bill the committee was favored with statements by quite a number of gentlemen from the different States mentioned in the bill, as members of the Associated Committees on Southern Rural Development. Most of these gentlemen are officially connected with agricultural interests of the States they represent. Their testimony will be found in the printed hearings before the committee. Among these gentlemen was Dr. E. C. Branson, Kenan professor of rural social economics, University of North Carolina. Among other things, Doctor Branson said:

"The farmers of North Carolina, the farmers of the South, the farmers of the western world, are settled in solitary farmsteads, just a few to the square mile, scattered in the vast open spaces of the South and the Nation. They live as no other farmers in the world live. All the rest of the farm world live in groups. Because of these wide spaces in between and because they have not only no chance to come together in group actions but even lack the will to do it, except for occasional economic or political purposes, the farmers of the South and of other sections that might be mentioned live as no other farmers in the world live."

On another occasion Doctor Branson is quoted as saying:

"More than half the farmers of the South, black and white, cultivate somebody else's land. The economic and social significance of such a condition is plain as print to any man capable of social visioning. We can not build a safe civilization on the homeless estate of men."

Another gentleman who appeared before the committee was Dr. W. W. Long, director of agricultural extension of the Agricultural College of South Carolina, who in the course of his statement said:

"It is the organized community—I repeat it is the organized community—that is the crux of this proposed legislation. Would it be too much to expect that ultimately the community organization would federate into the county organization, and likewise into a State organization, and then on into a national organization, where every phase of country life could be considered? There is no such organization existent to-day.

"It may be thought that this is the work of the individual and not of the legislator, and that is the natural inference. But I answer that by admitting after 35 years of close association and observation the rural leadership has greatly deteriorated. It is my firm belief that in a movement of this character it can only succeed by the Federal Government cooperating with the States in developing this proposed community demonstration, with the idea and hope that other communities will be organized by the people in their respective sections."

There also appeared before the committee Mr. Burdette Lewis, of Florida, executive vice president of the J. C. Penney-Gwinn Corporation, who said:

"Mr. J. C. Penney has acquired a large tract of land in Florida, which has been in operation along the lines outlined in this bill for four years. We have expended in that time several millions of dollars to try to bring about a condition such as is outlined in this project that you have before you, and we expect to spend several millions more.

"I want to confirm the statement that has been made here to you gentlemen that the problem is beyond private capital, because the term of years required to bring about the change in agricultural conditions is not one that is remunerative for private capital, not sufficiently remunerative within any devices that private capital has to-day.

"We feel that after our years of experience in trying to interest capital in this work that it takes a too far-sighted man to be willing to sink his capital in it and that we must depend upon others.

"Senator WALSH. Where do you get the most of your colonists from?

"Mr. LEWIS. Nineteen different States.

"Senator WALSH. How do you select them?

"Mr. LEWIS. They make application, usually after having read something about it, or getting in touch with some of the J. C. Penney stores, and we send something to them to give us data about themselves, and that is sent to us, so that our farm management can look into it, and they visit these people in their home States and see whether or not they are qualified."

There also appeared Mr. J. F. Jackson, general agricultural agent for the Central of Georgia Railway, Savannah, Ga., who said:

"We have talked with the tenants, but we can not do the work with the tenants; we must have the farm owners in order to do successful work along that line. And I would add that the attainment of farm ownership in this country is no longer a matter of courage and willingness to work hard and an ability to endure the hardships of pioneering. There are no longer any free lands in this country, and the values of lands are going higher steadily, and the capital necessary for farm ownership has vastly increased.

"I am positive that this country must take an interest in methods which will encourage and increase farm ownership, and that it must be done in these settlements or groups where farmers all have the same aspirations to attain to land ownership, and with an opportunity for direction in efforts for cooperation of all sorts, under conditions of vastly more favorable terms of purchase price than is now available."

Dr. Elwood Mead, Commissioner of Reclamation, Department of the Interior, whose office will be in immediate charge of the administration of the bill, also appeared and, among other things, said:

"If this bill becomes a law, it will give better opportunities for creating family farms owned by their cultivators. It has back of it the same conception as the homestead law when it was enacted, only it is adjusted to the conditions which now confront us. Instead of giving a farm out of the public domain this bill provides for expert planning of communities, practical advice, loans of money to supplement the settlers' capital at a low rate of interest and with enough time to repay the advances to enable the money to be earned out of the soil.

"The plan adopted is not an experiment. It is in operation in all the leading countries of Europe, in Australia, and South America. They have had to adopt it to hold people on the land. Not a country that has made it a national policy has given it up. On the contrary, it is proving the economic and social salvation of Denmark, Germany, and Italy. Without it Australia would still be a grazing country with nine-tenths of its population in seacoast cities.

"The Fairway Farms in Montana are an illustration of what is proposed in this measure. Good farms were bought. Good men were put on them and financed. They were encouraged by having farm ownership as their goal. They were good farmers, but now they were properly financed and enabled to carry out a definite scheme of action that had been thought out by the best economic brains of the country. They knew what they wanted to do. What they had to find out was how large their farms should be, what rotation they should follow, how many head of livestock they should carry, what machinery to buy and how to handle it. Now, the result is that these men who had failed before are succeeding.

"Income and profits must come from growing more and better crops and combining with his neighbors to create markets and ship in car lots.

"The negro, the mule, and the single-crop farm must give way to mixed farming, to the introduction of improved breeds of livestock, to the use of costlier and more complicated farm implements. It is impossible to bring about these changes through any existing agency. We can talk to the farmer until we are black in the face and he will go on as he has in the past. The credit and the financial strength needed in better farming are lacking. What we have is now largely based on cotton and tobacco. It must be entirely changed. To do this needs the encouragement and strengthening of purpose which comes from a group of people, acting together, from the opportunities which this gives them to employ expert advice and direction and thus have the benefit of superior training and intelligence, without too great expense. Rural reconstruction is a problem which transcends the power of the individual farm family.

"The value of these farms as demonstrations or object lessons of better planning, better practices, better business, and as the home of better schools and a more attractive social life can not be fixed now or in money at any time. Such a community will be a teacher which the farmer will respect because it will teach by results.

"These communities will give larger returns, both in money and products, than can be hoped for where each individual works for himself. This is not a matter of theory. It has been demonstrated conclusively over and over again in widely separated countries."

There also appeared Mr. Hugh MacRae, of Wilmington, N. C., chairman of the Associated Committees on Southern Rural Development, who read from a statement by Mr. D. R. Coker, of South Carolina, one of the leading agriculturists of the South, as follows:

"A steady decline in agriculture and rural civilization in large sections of the South is positively indicated by statistics of increasing tenancy, declining rural population, declining land values, sales of land for taxes, the rapid increase of lawlessness, especially distilling and liquor selling in rural sections, and the failure of hundreds of country banks during the past few years. (Sixteen banks failed in three eastern Carolina counties within five weeks last fall.) There are many other manifestations of declining rural civilization in the South and there is no indication that the trend has stopped or is even slowing up.

"The Department of Agriculture and the agricultural forces of the States, while they have undoubtedly done much good work, have only been able on the average to slow up the trend toward worse conditions, although there are notable examples in isolated localities of improved conditions.

"It is manifest, therefore, that the agencies now operating are not meeting the exigencies of the situation. Already many coastal plains counties have lost the bulk of their intelligent and thrifty population, leaving practically no human basis upon which to rebuild.

"Southern agriculture in large part must be revitalized, and a new remedy must be devised to accomplish this. I know of no method which holds out any promise of rehabilitation of rural life except the establishment of demonstration farm colonies of selected, industrious people who will be placed upon the land in groups of 100 or more families. There is no agency at present which can or will do this work except the National Government. The establishment of such demonstrations will involve the purchase of large tracts of cheap but suitable land, partial preparation of each individual tract for the settler and sale to him at approximate cost, plus an amount for overhead and contingencies, the maintenance of an organization to supply information, leadership, and financial management during the initial stages, and the cooperation of governmental and State agencies to lay out and supervise the agricultural programs for each group.

"Each group should become independent of the Government in 5 to 10 years if reasonably successful and should have within that length of time been able to work out an agricultural program of their own, as well as established cooperative machinery to handle their major problems of buying and selling. Such settlements might well act as demonstrations of poultry farming, dairying, truck growing, the growing of flowers, fruits, and other forms of horticulture and of better and more intensive methods of producing our standard major crops, such as the grains, forages, cotton, and tobacco. They would supply units for the successful development of canning factories and, in some instances, creameries.

"The chief value of such settlements will be in demonstrating that agriculture can be made profitable under conditions which make for happiness and contentment. They will act as large-scale demonstrations of methods of production of a variety of crops and products, thus leading the surrounding regions back to a better agriculture. Time after time it has been proven that a single isolated success with a particular crop or method does not revolutionize the practice of a community. It is only when the same method is duplicated time after time in a small area that farmers generally gain confidence and adopt it. Wholesale demonstration of an agricultural method or crop is the only way to quickly get it into production in a given area.

"I hope we can secure the cooperation of all intelligent citizens in an attempt to establish such demonstrations."

In addition to his presentation of Mr. Coker's statement, Mr. MacRae, who for many years has been one of the outstanding public leaders of North Carolina and the South, testified for himself, in part as follows:

"For 25 years I have been actively interested in the problem of rural communities building. I like to think of that particular line of work as human engineering. Twenty-five years ago there was no chart to follow. It was just a matter of trying different methods and proving them out, and I believe I made almost every mistake that one could make. I am an advocate of the methods indicated in the bill before the committee, and believe that what is unhappily designated as the farm problem is a multitude of problems. As a result of the work in which I have been engaged we have four rural communities. One of them is known as Castle Haynes, and is recognized as an outstanding success. I want to briefly refer to that.

"Senator SHORTRIDGE. That is a phase of the development of rural communities that is indicated in the bill?

"Senator SIMMONS. Yes.

"Mr. MACRAE. The planning and supervision of rural communities. I will refer to Castle Haynes and then I will be glad to answer such questions as you may think will bring the desired information.

"Senator SHORTRIDGE. Where is that place?

"Mr. MACRAE. It is 9 miles north of Wilmington, in North Carolina, near the coast.

"Senator SIMMONS. In the old slave-holding section of the State.

"Mr. MACRAE. I believe in the Constitution the pursuit of happiness is said to be one thing that is reserved to citizens of America. Am I right in that?

"Senator SHORTRIDGE. That is in the Declaration of Independence.

"Senator ASHURST. In the Declaration of Independence, written by Thomas Jefferson. It is in the spirit of the Constitution, all right.

"Senator SHORTRIDGE. We are entitled to life and liberty and not to happiness, but to the pursuit of happiness.

"Mr. MACRAE. It is the pursuit of happiness in some measure, I find, that is causing the drift from the farm to the city. Until happiness can be found on the farm and the rural dweller becomes prosperous and contented, this drift will continue from bad to worse. The manufacturers will soon be as much interested in this subject as the farmers. The proper development of rural communities is the agricultural equivalent of small factories, and will have to be worked out in somewhat the same manner. Castle Haynes has produced successful, prosperous, happy families, and that I say, is the objective. It was not an accident, but the result of following definite principles.

"Senator SIMMONS. You are the owner of the property that has been developed?

"Mr. MACRAE. The people of Castle Haynes are very prosperous. Every family has paid for their farm; they own high-powered trucks; they own cattle, mules, cows; they have money in bank; many of them have invested in railroad securities."

* * * * * * *

"I feel that anything that can be done on a large scale along this line will be a great success. After going all over this country studying this matter—in Utah, California, Wisconsin, and other States—I went to Holland and Denmark and studied their systems, and I reached the conclusion on the way back that the agriculture of the South could be revolutionized by getting behind it the right forces, and in those forces I included the Government of the United States; and that is the only way in which it can be done. The Government can wait for its return on any sound proposition for 20 or 30 years, while a private individual can not do so. I felt that one demonstration in each of these immediate States by the Government, and two or three by each State following the Government demonstration, and some others by private individuals later, we could revolutionize the agriculture of the South at the minimum expense and in the shortest possible time and produce a farming system that will make a satisfactory rural life. When one State succeeds all the others will have to follow suit. It is just like the good-roads proposition. North Carolina has a good-roads system, and every other Southern State will be forced to follow suit."

There also appeared Mr. J. M. Patterson, chairman of the Georgia State Committee on Southern Rural Development, Albany, Ga., who testified in part as follows:

"In the days of slavery the cities did not cut so much figure in the South. The big plantation was the social center in the South. When the slaves were set free, the majority of those big plantation owners were in financial straits. They could not carry on. They resorted naturally—the only resort they had—to the tenant system with negroes. In a very short time, as the older generation died off, the younger generation moved to the towns, deserted the old homes. They expected the negro tenants, whom they had to finance, give them mules and the necessaries of life, to make enough money off the plantation to support the owners in the towns. In the meantime they did not put back any improvements on the land in the way of building and equipment. The white men that were left on the farms were known in that country as no-good white men, ne'er-do-wells. It was not respectable for a white man to labor on a farm. That condition went on. The one-crop system was forced on them.

"Senator SIMMONS. You are speaking of the slave-holding sections of the State, are you not?

"Mr. PATTERSON. Yes. I am not trying to describe your State; I am describing southern Georgia.

"Senator WALSH of Montana. That was all slave-holding, was it not?

"Senator SIMMONS. Pretty much. North Carolina was less than half.

"Mr. PATTERSON. That is correct. I should have made that modification. It was the only thing they could sell for cash. They came to the point where they felt they could not raise anything but cotton and a little corn. In the meantime the Great Plains of the West were opened up, and the slogan was, 'Go west, young man.' The railroads were putting out all sorts of inducements to people to go West, with the result that no new agricultural blood came South. And to this day to only a very limited extent have any agricultural people come into the South. That tells us why we are in the condition we are in, I think."

There also appeared Mr. R. S. MacElwee, commissioner of port development, Charleston, S. C., who was for years with the International Harvester Co. and traveled extensively in that interest in America and abroad, and who was also at one time Chief of the Bureau of Foreign and Domestic Commerce of the Department of Commerce. Mr. MacElwee said, in part:

"The question always in establishing an enlightened, organized rural community, of interdependence of individuals, owning their own lands, was the initial investment in buildings and land necessary to start. After the start, scientific agriculture and education along various social as well as agricultural lines has inevitably worked out satisfactorily in those places I had occasion to observe in the old country, where certain new districts were built up with a new group of farmers.

"The reason that a program requiring from 30 to 50 years is a State problem, using the word 'State' now in an economic sense as a governmental problem, is the same as that of forestry and reforestation. It is too long for private initiative, because the returns are too far deferred. To build a rural community is as long a process as building a forest; the same principles of investment and return, the same security on what is built up as a forest, is found in these communities.

"Now, some of the functions of a large group of independent landowners, associated together for mutual benefit, are: In the purchase of their supplies, the examining of their fertilizer and their seeds, the breeding of better seeds, breeding of better stock, the maintenance of certain stud animals to improve stock on the farms, and what is known as farm statics; that is, the balance of interrelationship like a bridge girder, of plant life, of animal life on the farm, are only possible where the group works together. The individual can not do it. And that was the reason the capital investment and necessity of group action that caused in the early history of the German Empire, particularly in Prussia, the application of these methods in groups, over long periods of years, to certain areas that were backward and needed to be brought up again. It was a case of encouraging individual farm owners, who 50 years ago showed a tendency to drift back into the agricultural slump.

"Now, the benefits I am sure will be brought out by other speakers that have already been touched upon. Among them is that of joint group marketing, the joint use of breeding stock, the joint use of large machinery—and that is where I come in in my harvesting work. For instance, the farmers had too little wheat to use a binder, but the group maintained a park of binders and one binder would cut the wheat of three or four farms, and probably 12 binders would be used by the group and take care of 20 or 30 farms.

"I mentioned the examination of feeds and fertilizers and seeds, in which there has always been a certain amount of inadequate supervision. The question of soil study is carried on now by the Department of Agriculture where the farmers are intelligent enough to use it, but the question of having your neighbors' soil analyzed, and their fertilizer analyzed, and then producing better crops, will bring the backward fellows into line."

Special attention is called to the printed hearings, from which the foregoing statesments are taken.

ANNIVERSARY OF BRIGADIER GENERAL PULASKI'S DEATH

Mr. FESS. Mr. President, from the Committee on the Library I report back favorably without amendment the joint resolution (S. J. Res. 50) to provide for the observance of the one hundred and fiftieth anniversary of the death of Brig. Gen. Casimir Pulaski. I invite the attention of the junior Senator from Washington [Mr. DILL] to this report.

Mr. DILL. Mr. President, the joint resolution simply authorizes the President to request the observance of the one hundred and fiftieth anniversary of the death of General Pulaski. I ask unanimous consent for its immediate consideration.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution, and it was read, as follows:

Whereas October 11, 1779, marks, in American history, the date of the heroic death of Brig. Gen. Casimir Pulaski, who died from wounds received on October 9, 1779, at the siege of Savannah, Ga.; and

Whereas the States of Indiana, Wisconsin, Michigan, Ohio, South Carolina, Pennsylvania, New York, Minnesota, Maryland, New Jersey, Illinois, and other States of the Union have, by legislative enactment, designated October 11, 1929, to be "General Pulaski's Memorial Day"; and

Whereas October 11, 1929, marks the one hundred and fiftieth anniversary of the death of General Pulaski, and it is but fitting that such date should be observed and commemorated with suitable patriotic exercises: Therefore be it

Resolved, etc., That the President of the United States is requested, by proclamation, (1) to invite the people of the United States to observe October 11, 1929, as the one hundred and fiftieth anniversary of the death of Brig. Gen. Casimir Pulaski, Revolutionary War hero, by holding such exercises and ceremonies in schools, churches, or other suitable places as may be deemed appropriate in commemoration of the death of General Pulaski, and (2) to provide for the appropriate display of the flag of the United States upon all governmental buildings in the United States on such date.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

BILLS AND JOINT RESOLUTION INTRODUCED

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. KENDRICK:

A bill (S. 1333) to encourage and promote the production of livestock in connection with irrigated lands in the State of Wyoming; to the Committee on Public Lands and Surveys.

By Mr. COPELAND:

A bill (S. 1334) for the relief of the Herschel Jones Marketing Service, (Inc.) (with accompanying papers); to the Committee on Claims.

By Mr. TYSON:

A bill (S. 1335) for the relief of Joseph S. Johnson; to the Committee on Military Affairs.

A bill (S. 1336) for the relief of Booth & Co. (Inc.), a Delaware corporation; to the Committee on Claims.

A bill (S. 1337) granting the consent of Congress to the Highway Department of the State of Tennessee to construct a bridge across the Clinch River, near Kingston, in Roane County, Tenn.; to the Committee on Commerce.

By Mr. OVERMAN:

A bill (S. 1338) granting a pension to Nancy Dobbs Cassidy; to the Committee on Pensions.

By Mr. CAPPER:

A bill (S. 1339) granting a pension to Isabelle Simington (with accompanying papers);

A bill (S. 1340) granting an increase of pension to Elizabeth A. Mitchell (with accompanying papers); and

A bill (S. 1341) granting an increase of pension to Frances A. Owens (with accompanying papers); to the Committee on Pensions.

By Mr. FLETCHER:

A bill (S. 1342) for the relief of E. S. de Bessieres (with accompanying papers); to the Committee on Military Affairs.

A bill (S. 1343) granting a pension to Marguerite D. Maxwell; to the Committee on Pensions.

By Mr. REED:

A bill (S. 1344) to authorize the payment of burial expenses of former service men who die in indigent circumstances while receiving hospitalization and whose burial expenses are not otherwise provided for;

A bill (S. 1345) to authorize the Secretary of War to acquire, free of cost to the United States, the tract of land known as Confederate Stockade Cemetery, situated on Johnstons Island, Sandusky Bay, Ohio, and for other purposes; and

A bill (S. 1346) to amend section 5a of the national defense act, approved June 4, 1920, providing for placing educational orders for equipment, etc., and for other purposes; to the Committee on Military Affairs.

By Mr. VANDENBERG:

A bill (S. 1347) to amend section 5 of an act entitled "An act authorizing Maynard D. Smith, his heirs, successors, and assigns, to construct, maintain, and operate a bridge across the St. Clair River at or near Port Huron, Mich.," approved March 2, 1929, and being Public Act 923 of the Seventieth Congress; to the Committee on Commerce.

By Mr. WHEELER.

A bill (S. 1348) granting an increase of pension to Thomas B. Morton; to the Committee on Pensions.

By Mr. WAGNER:

A bill (S. 1349) to provide for the appointment of Maurice D. Loewenthal as a warrant officer, United States Army; and

A bill (S. 1350) for the relief of Harry Stanbrough Monell, formerly chairman War Department Claims Board Transportation Service; to the Committee on Military Affairs.

By Mr. FLETCHER:

A joint resolution (S. J. Res. 51) to provide for the preparation and distribution of pamphlets containing the Constitution of the United States printed in foreign languages and in English; to the Committee on Printing.

AMENDMENT TO THE TARIFF BILL—SPONGES

Mr. FLETCHER submitted an amendment intended to be proposed by him to House bill 2667, the tariff revision bill, which was referred to the Committee on Finance and ordered to be printed.

OPEN EXECUTIVE SESSIONS

Mr. JONES. Mr. President, I submit a substitute for Senate Resolution 19, and ask that it may be printed, printed in the RECORD, and lie on the table.

There being no objection, the proposed substitute to Senate Resolution 19, to amend paragraph 2 of Rule XXXVIII, relating to proceedings on nominations in executive session, was ordered to lie on the table, to be printed, and to be printed in the RECORD, as follows:

In lieu of the language contained in the resolution insert the following:

"2. Nominations shall be considered in open session unless the committee reporting any particular nomination shall recommend that it be considered in closed executive session, and the Senate by a majority vote shall so determine. When nominations are considered in closed executive session all information communicated or remarks made by a Senator concerning the character or qualifications of the person whose nomination is being so considered shall be kept secret. If, however, charges shall be made against a person nominated, the committee may, in its discretion, notify such nominee thereof, but the name of the person making such charges shall not be disclosed. The fact that a nomination has been made, or that it has been confirmed or rejected, shall not be regarded as a secret; and all roll calls in closed executive session, together with a statement of the question upon which such roll calls are had, shall be published in the RECORD."

PRINTING OF PROCEEDINGS AT UNVEILING OF STATUE OF WADE HAMPTON

Mr. SMITH submitted the following concurrent resolution (S. Con. Res. 13), which was referred to the Committee on Printing:

Resolved by the Senate (the House of Representatives concurring), That there be printed with illustrations, and bound, the proceedings in Congress, together with the proceedings at the unveiling in Statuary Hall, upon the acceptance of the statue of Wade Hampton, presented by the State of South Carolina, 5,000 copies, of which 1,000 shall be for the use of the Senate and 2,500 for the use of the House of Representatives, and the remaining 1,500 copies shall be for the use and distribution of the Senators and Representatives in Congress from the State of South Carolina.

The Joint Committee on Printing is hereby authorized to have the copy prepared for the Public Printer and shall procure suitable illustrations to be bound with these proceedings.

HOUSE JOINT RESOLUTIONS REFERRED

The following joint resolutions were severally read twice by their titles and referred to the Committee on Appropriations:

H. J. Res. 82. Joint resolution making appropriations for additional compensation for transportation of the mail by railroad routes in accordance with the increased rates fixed by the Interstate Commerce Commission;

H. J. Res. 83. Joint resolution to make available funds for carrying into effect the public resolution of February 20, 1929, as amended, concerning the cessions of certain islands of the Samoan group to the United States; and

H. J. Res. 84. Joint resolution extending until June 30, 1930, the availability of the appropriation for enlarging and relocating the Botanic Garden.

"LENROOT'S LIFT"

Mr. WHEELER. Mr. President, I present an editorial from the Helena Independent of May 29, 1929, entitled "Lenroot's Lift," which I ask may be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Helena (Mont.) Independent, May 29, 1929]

LENROOT'S LIFT

The elevation of ex-Senator Lenroot to the Federal judiciary shows the people how it is done to them.

As a lawyer Lenroot had very limited experience. He had been "lame ducked" by the people of his home State, who knew him best. According to evidence before the Federal Trade Commission, he had received $20,000 from the Power Trust to further its interests before the Senate. In one of his first public addresses President Hoover urged the necessity of improvement of the judiciary.

In the face of these things Lenroot gets a $12,000 Federal judgeship for life, with full-pay pension upon retirement. He had whooped it up for Hoover's nomination at the Kansas City convention.

The matter will be regretted by millions of Mr. Hoover's admirers. However, even Achilles had a weak spot, in his heel.

"WHEAT AND REPUBLICANS"

Mr. WHEELER. Mr. President, I present an editorial from the New York Times of to-day entitled "Wheat and Republicans," which I ask may be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 3, 1929]

WHEAT AND REPUBLICANS

The low price of wheat has thrown the Republicans at Washington into low spirits. Their opponents are charging them with responsibility for the drop and they don't well see how they can deny it. Certainly their party has always claimed the credit when wheat was $1.50 a bushel or more, the theory being that the protective tariff makes wheat germinate, furnishes just the right amount of moisture and heat, keeps out rust, and leads the happy farmer always to vote the Republican ticket. But now what is happening? The tariff duty on wheat has been pushed up to 42 cents a bushel, while almost at the same time the market price has fallen something like 30 cents. Coincidentally, the Republicans were passing their bill for farm relief, designed to prevent surplus production, or else to take care of it, to stabilize prices and put money in

the pocket of every farmer. Yet wheat, in the most perverse spirit, has kept on piling up an unwieldy surplus and glutting the markets even at the lower price. This is unfortunate economically, but politically the Republicans feel that it is deadly.

What to do about it they are at their wits' end to know. Senator NYE has introduced a bill to take $200,000,000 out of the Treasury to buy up the surplus wheat. Then it is to be given away to the starving Chinese. How it could be got to them, whether they would like it and use it, no one seems to know. The main thing is to get the carried-over wheat and the expected surplus from this crop out of the market. That would be expected to raise the price on what is left. But would not this be in the very act a confession that the whole Republican scheme of enriching the farmer through the tariff is a flat failure? Something else, it is now perceived, must be done or attempted.

It will not do for the harassed Republicans to fall back on the law of supply and demand. It, they have long asserted, can be modified or repealed by tariff taxes. Yet in this instance the tariff obviously will not work. It is undoubtedly true that in the United States and also in Canada and other wheat-growing countries, there has been overproduction. How to deal with it is admittedly a serious question. But the proof is ample that it does not fit at all into the Republican theory. Events have demonstrated this and have brought about the confusion and gloom into which the Republican leaders have been thrown by the sight of wheat selling below $1. They never could have believed that nature and the docile Republican farmers would behave so ungratefully!

ENROLLED JOINT RESOLUTION PRESENTED

Mr. GREENE, from the Committee on Enrolled Bills, reported that on to-day that committee presented to the President of the United States the enrolled joint resolution (S. J. Res. 34) authorizing the Smithsonian Institution to convey suitable acknowledgment to John Gellatly for his offer to the Nation of his art collection and to include in its estimates of appropriations such sums as may be needful for the preservation and maintenance of the collection.

CALL OF THE ROLL

Mr. FESS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Allen	Gillett	La Follette	Smith
Ashurst	Glass	McKellar	Smoot
Blease	Glenn	McMaster	Steiwer
Borah	Goff	McNary	Stephens
Bratton	Greene	Metcalf	Swanson
Brookhart	Hale	Norbeck	Thomas, Idaho
Broussard	Harris	Norris	Thomas, Okla.
Burton	Harrison	Nye	Townsend
Capper	Hastings	Oddie	Trammell
Connally	Hatfield	Overman	Tydings
Copeland	Hawes	Patterson	Tyson
Couzens	Hayden	Phipps	Vandenberg
Cutting	Heflin	Pine	Wagner
Dale	Howell	Pittman	Walcott
Dill	Johnson	Ransdell	Walsh, Mass.
Edge	Jones	Reed	Walsh, Mont.
Fess	Kean	Sackett	Warren
Fletcher	Kendrick	Schall	Waterman
Frazier	Keyes	Sheppard	Watson
George	King	Simmons	Wheeler

Mr. HEFLIN. My colleague the junior Senator from Alabama [Mr. BLACK] is unavoidably absent from the Senate.

Mr. FESS. The junior Senator from Maryland [Mr. GOLDSBOROUGH] is absent from the Chamber on account of illness. The junior Senator from Rhode Island [Mr. HEBERT] is unavoidably detained from the Senate.

Mr. WATSON. My colleague the junior Senator from Indiana [Mr. ROBINSON] is necessarily absent from the city.

The VICE PRESIDENT. Eighty Senators having answered to their names, a quorum is present. The Senate resumes the consideration of Senate bill 108, the unfinished business.

MARKETING OF PERISHABLE AGRICULTURAL COMMODITIES

The Senate, as in Committee of the Whole, resumed the consideration of the bill (S. 108) to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce.

Mr. SWANSON. Mr. President, I have received a telegram from Hon. G. W. Koiner, commissioner of agriculture of Virginia, who is a very efficient and capable commissioner, regarding the pending bill. It is very short. I ask that it be read at the desk.

The VICE PRESIDENT. Without objection, the clerk will read, as requested.

The telegram was read and ordered to lie on the table, as follows:

RICHMOND, VA., *June 1, 1929*.

Senator CLAUDE A. SWANSON:

Please support bill now pending, Borah patron, to suppress unfair and fraudulent practices in marketing perishables.

G. W. KOINER.

The VICE PRESIDENT. The bill is before the Senate as in Committee of the Whole and open to amendment.

Mr. WALSH of Montana. Mr. President, I offer an amendment to strike out subdivision 6, on page 2, beginning in line 12, and to insert in lieu thereof the following:

> The term "dealer" means any person engaged in the business of buying or selling any perishable agricultural commodity in interstate or foreign commerce: *Provided*, That this act shall not apply to retailers buying in less than carload quantities, nor shall section 4 of this act apply to producers selling only products of their own raising.

The language of that subsection as it is drawn is awkward. It will be observed that it first excludes persons who are engaged in buying or selling at retail, and then provides that those buying in less than carload lots are excluded, but those buying in more than carload lots are included. The only purpose is to correct what might be considered the faulty construction of the paragraph, and to exclude from the operations of the licensing feature of the proposed act; that is, from the requirement of the license, producers selling or shipping products of their own raising.

Mr. KING. Let the amendment be stated, Mr. President.

The VICE PRESIDENT. The Secretary will state the amendment.

The CHIEF CLERK. It is proposed to strike out subsection 6, on page 2, beginning in line 12, and in lieu thereof to insert:

> The term "dealer" means any person engaged in the business of buying or selling any perishable agricultural commodity in interstate or foreign commerce: *Provided*, That this act shall not apply to retailers buying in less than carload quantities, nor shall section 4 of this act apply to producers selling only products of their own raising.

Mr. COPELAND. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from New York?

Mr. WALSH of Montana. I yield.

Mr. COPELAND. Mr. President, I desire to ask the Senator from Montana if this would not be the effect of his amendment: Since the exempted persons would be unlicensed persons, is it not probable that the licensed commission men would refuse to deal with them, and that they, in their turn, would be forced then to go to the brokers or commission merchants of the locality who are licensed? In other words, would not the producers be placed at the mercy of the present situation?

Mr. WALSH of Montana. I would hardly expect that to happen. I should imagine that the commission merchant would be eager to buy where he could buy to the best advantage.

Mr. COPELAND. But, if the Senator will permit me, there would be a decided lack of mutuality there. The commission merchant, for instance, in New York would be liable to all the penalties of the bill, should it become a law, while the person shipping would have no responsibility under it. As I have before stated, many times perishable commodities which are received in New York are received in bad condition because they are badly packed; they are not sent as they should be; they are damaged in transit and are received in a condition which makes them unsalable. The producer knows that when he ships those products they are all right, and, of course, he has a grievance; but the commission merchant in New York, who is licensed, knows that if he takes any chances of that sort of thing from an unlicensed person, the unlicensed person in the country has no penalty to pay. All the burden is then placed upon the commission merchant in New York.

I am quite confident that this amendment, which, on the face of it, seems so good, would result in throwing the producer in the country into the hands of the local broker.

Mr. WALSH of Montana. Mr. President, I am not at all apprehensive of the result that seems to trouble the Senator from New York. I do not imagine that the producer who ships will be at any disadvantage whatever by not being obliged to take out a license, which seems to me would be a burden upon him, of which the amendment seeks to relieve him. There is, however, a very just consideration suggested by the Senator from New York, namely, that there is no mutuality in the matter. The commission merchant is obliged to take out a license, and becomes subject not only to the ordinary common-law action but subjects himself to being disciplined by the Secretary of Agriculture; if his offenses are grievous, his license may be taken away from him entirely; and he stands that chance as well as the other chances. Likewise, an additional remedy is offered to the shipper.

The only lack of mutuality which seems to me to be worthy of consideration is that the commission merchant may be in correspondence with a producer shipper, and the producer shipper may represent that his commodities are of a certain class and kind, but when they are received with a bill of lading at-

tached the commission merchant, or, at least, the purchaser of the goods, is at this disadvantage: He must take up the bill of lading before he practically sees the commodities at all. If they are misrepresented to him he has, of course, a cause of action against the shipper, which he may prosecute in any of the courts without the aid of this proposed statute.

I do not apprehend, however, that occasions of that kind will arise very often; and Senators will observe that the bill as it stands proposes to exempt the producer shipper from the necessity of securing a license if his shipment is less than a carload lot. The provision is merely extended to give him the exemption whether he ships in carload lots or in less than carload lots.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Idaho?

Mr. WALSH of Montana. I yield.

Mr. BORAH. I was going to suggest to the Senator from Montana and to the Senator from New York that the fee for the license be reduced to a nominal sum. I see some objections to relieving from the operations of the bill the producer seller who ships a carload. Would it be satisfactory if the amount of the license were reduced to $1? The great object of this bill, of course, is to prevent commission merchants and dealers and brokers from doing business who are not willing to do business in a *fair* and honest way.

Mr. WALSH of Montana. That would be entirely satisfactory to me.

Mr. SMITH. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from South Carolina?

Mr. WALSH of Montana. I yield.

Mr. SMITH. I should like to call attention to the fact, although it is well known to those who have given thought and study to this bill, that many shipments are made by different producers. For instance, a carload may represent commodities produced by four or five melon growers or truck growers who assemble their products and ship them in carload lots. Under the provisions of this bill each one would have to take out a license.

Mr. BORAH. No.

Mr. SMITH. Each one would be liable, for each one who contributed to the carload lot would be shipping virtually in a carload lot.

Mr. BORAH. No. If four or five shippers should combine and make of their products a carload lot, each one would not be selling in a carload lot, because each one would be contributing below a carload lot.

Mr. SMITH. But the entire shipment is in a carload lot.

Mr. BORAH. The products may be shipped in a carload lot, but the bill only applies to individual shippers who ship their own products in carload lots. If four or five should ship together, the bill would not cover the four or five.

Mr. SMITH. I have a comment here from one who has had considerable experience in matters of this kind. He calls my attention to this particular provision of the bill and seems to be of the opinion that it would be disadvantageous. In his communication to me he goes on to say:

> It should be remembered that practically 85 or 90 per cent of all the fresh fruit and vegetables entering into interstate commerce are shipped in car lots, if not by one producer, then by two or more producers in the same community who combine their shipments to save freight. In such cases all would be required to pay the license of $10 annually.

Mr. BORAH. I am going to modify the provision calling for the payment of $10 for a license in a few moments, but I may say at this time it would not apply, I think, at all to a combination of parties shipping a carload lot.

Mr. SMITH. The bill says "any dealer." Under the terms of the amendment proposed by the Senator from Montana, as I understand it, the individual shipper—that is, the producer who ships in carload lots—is eliminated. He is not liable to pay the $10 license if he ships his own products in carload lots.

I imagine the object of this bill is not to embarrass the producer but to guarantee a square deal to him by the man who purchases his products and who, under the terms of the bill, is required to make a correct report as to the condition of the products when they arrive.

I listened to the statement of the Senator from New York [Mr. COPELAND], but I do not see how we would benefit the business of truck growing and shipping by imposing a license upon the man who produces and ships, because the condition in which the products arrive may not be chargeable to him at all. The commodities may be damaged in transit; they may be received in bad condition because of several reasons arising after they leave his hands. However, we are attempting to give him a square deal in relation to the products which he grows when they arrive at the market, and I do not see why we should not be careful in the wording of the bill not to put a tax or a burden upon the producer, but simply, as nearly as we can, protect him from imposition growing out of the condition of his products when they arrive.

Mr. KING. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Utah?

Mr. WALSH of Montana. I yield.

Mr. KING. I am not certain whether the reply of the Senator from Montana to the Senator from Idaho means that he has receded from the amendment which he offered. As I understood his amendment to subdivision 4, it was to relieve producers from the necessity of taking out licenses, and, as I understand, the Senator from Idaho objects to the amendment. He insists that the producer himself shall be subjected to the terms of the bill.

Mr. BORAH. I am particularly anxious that the producer shipping in carload lots shall have the benefit of this bill when his products reach the market. I was of the opinion when the amendment was first offered by the Senator from Montana that it would exclude him from the operations of the bill entirely. I asked, therefore, would it not be practicable to reduce the amount of the fee to a dollar a year instead of $10? Then there could be very little objection to the producer shipping in carload lots taking out a license.

Mr. KING. Mr. President, if I may interrupt the Senator from Montana further——

The VICE PRESIDENT. Does the Senator from Montana yield further to the Senator from Utah?

Mr. WALSH of Montana. I yield.

Mr. KING. The amount of the license fee is unimportant, so far as I am concerned. It is the principle involved which engages my attention. In the first place, I am not in accord with the view that to carry on business one must obtain a license from the Federal Government and subject himself to the surveillance of the Department of Agriculture or some other Federal department. However, waiving that point, I submit that it is unfair, if this bill is in the interest of the producer, to subject him to the terms of the bill requiring him to take out a license. If some commission merchant or consignee complains that a producer shipped products that did not suit the consignee, then the producer's license is to be taken from him and he is thereafter denied the right to sell or dispose of his products in interstate commerce. I object to the amendment of the Senator from Montana if by it he seeks to require producers to take out Federal licenses.

Mr. WALSH of Montana. Mr. President——

Mr. BORAH. Mr. President, may I say just a word first?

The VICE PRESIDENT. Does the Senator from Montana yield further to the Senator from Idaho?

Mr. WALSH of Montana. I yield.

Mr. BORAH. Notwithstanding the suggestions which have been made, I desire to change the amount of the fee, and then, so far as I am concerned, I am going to accept the amendment of the Senator from Montana.

Mr. KING. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield further?

Mr. WALSH of Montana. I should like to say a word now myself.

Mr. President, I desire to make it clear to the Senator from Utah that the bill as it is before us subjects the producer-shipper to the requirement of taking out a license. It, however, exempts the shipper provided he ships in less than carload lots. If he ships in a carload lot or more than a carload lot, he must take out a license under the provisions of this bill.

Mr. SMITH. Mr. President——

Mr. WALSH of Montana. The purpose of this amendment is to exempt a producer-shipper from the necessity of taking out a license whether he ships in carload lots or less than carload lots.

Mr. KING. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana now yield to the Senator from Utah?

Mr. WALSH of Montana. I do.

Mr. KING. If that is the effect of the amendment, I approve of it, because as I urged on Friday and a moment ago as an objection to the bill the provision subjecting the producer to the terms of the bill which govern commission merchants.

Mr. WALSH of Montana. The only answer I can make to that is the suggestion made by the Senator from New York. If we require the consignee to take out a license so that the shipper may have another remedy, it would seem as though perhaps we ought to give the consignee, in exactly the same

way, another remedy against the shipper; but legislation always meets abuses, and it is inadvisable to have it go farther than the necessities of the case. Up to the present time I have not heard very much of embarrassments to which commission merchants have been subjected in their dealings with their shippers, while the complaints the other way have been innumerable.

Mr. SMITH and Mr. TRAMMELL addressed the Chair.

The VICE PRESIDENT. Does the Senator from Montana yield; and if so, to whom?

Mr. WALSH of Montana. I yield to the Senator from South Carolina.

Mr. SMITH. Mr. President, if the proposition of the Senator from Idaho is accepted, that we make the license fee a nominal one, then, in case the license is taken out, it presupposes that some standard must be set up by the department that issues the license as to the quality of the goods and the character of the shipment; and if the producer does not subscribe or some one alleges that he has not subscribed to these restrictions or to the formula that the Agricultural Department may set up, then he loses his license and can not ship any more stuff. He is out; and the very object of this bill and of all legislation along this line is to encourage fair dealing with those who are organized to receive it. Why should we require any license at all upon the part of the producer who ships his stuff subject to inspection when it arrives?

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Idaho?

Mr. WALSH of Montana. I do.

Mr. BORAH. I have accepted the amendment of the Senator from Montana. I have also reduced the amount of the fee; but let me say in this connection that while this bill is designed primarily to protect the producer, yet nevertheless there is another party in the transaction, and that is the commission merchant or the dealer. They are entitled to some consideration; and it was for that reason that the bill was drawn as it was, so that there would be a parity of obligation between them. I have no fear myself of any producer being cut out of the privilege of shipping; but I have accepted the amendment, and so that eliminates that question entirely.

Mr. COPELAND. Mr. President——

The PRESIDING OFFICER (Mr. PHIPPS in the chair). Does the Senator from Montana yield to the Senator from New York?

Mr. WALSH of Montana. I yield.

Mr. COPELAND. I can hardly understand how the Senator from Idaho can accept this amendment if the purpose of this bill is to protect the producer. That is what it is for; is it not?

Mr. BORAH. That is one purpose.

Mr. COPELAND. Well, that is the main purpose. It would not be here if the commission merchant had to be protected; the bill would not have been brought in, at least in this form.

Now, however, the Senator accepts an amendment which places the producer at home entirely at the mercy of the home broker; because why should the commission merchant in New York or Chicago, seeking to buy produce, buy it of an irresponsible shipper in the country somewhere, when in the same section of the country there is a licensed commission man or broker? He will not do that. Since he is brought under the regulation of this act, he is bound to deal with another person who is under the same regulation; and I think the Senator from Idaho, if he will permit me to say so, makes a serious mistake if he does this.

Mr. THOMAS of Idaho. Mr. President——

The PRESIDING OFFICER. The Senator from Montana has the floor. Does he yield?

Mr. WALSH of Montana. I yield to the junior Senator from Idaho.

Mr. THOMAS of Idaho. I desire to ask a question of the Senator from New York. Now, we have regulated the stockyards so that the commission merchants there are practically under a license; we have regulated the grain exchanges so that the commission merchants on the grain exchanges are accountable to some one; and yet the man who ships the carload of grain is not required to take out a license, nor is the man who ships a carload of livestock required to take out a license. The people at the other end are supposed to give him an account of the shipment when it arrives; and the idea of this bill is to have these people given some accounting and given a square deal.

My experience in dealing with the commission merchant is that he will not raise that question; that he is not opposing this bill, because he welcomes honest dealing and honest handling of products: but the trouble with the situation is that there are a lot of irresponsible fellows in the country who might be called scalpers, who feel that it is legitimate to rob the farmer and the country dealer every time a carload of produce starts to market.

Mr. COPELAND. Mr. President——

Mr. WALSH of Montana. I now yield to the Senator from New York.

Mr. COPELAND. Mr. President, is all the dishonesty in the world in the cities?

Mr. BORAH. No; certainly not.

Mr. COPELAND. All right.

Mr. BORAH. But there are several dishonest people in the cities.

Mr. COPELAND. That is probably true; and there may be several in the country. I contend, however, that it is not fair to ask the commission merchant in the city to submit to the conditions of section 4, requiring the license—and I notice in subsection (b) that the Secretary may, by regulation, prescribe the information to be contained in such application—it is not fair to ask the commission merchant to submit to that sort of regulation and then to let anybody in the world ship goods and then later make a claim for money—I see that this is a collection agency as well as everything else—and also to penalize the commission merchant because he has refused to receive, or has dumped out as unsuitable, material which has beeen sent by somebody in the country who is absolutely irresponsible, unlicensed, can not be reached by the Secretary of Agriculture or by the courts, but is a perfectly irresponsible individual shipping this stuff. I am not a lawyer; but if this lack of mutuality would not defeat this bill in the courts, I am sure nothing possibly could.

Mr. SIMMONS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from North Carolina?

Mr. WALSH of Montana. I yield to the Senator.

Mr. SIMMONS. I should like to say to the Senator from New York that in case this bill is passed, and a proceeding of the character provided in the bill should be inaugurated before the department, in that proceeding necessarily the name of the shipper would be disclosed, and the grievance of the shipper would be disclosed. If there was falsification on the part of the commission merchant as to the quality or as to the condition of the goods, if that was the gravamen of the complaint, undoubtedly in any tribunal or before any person invested with the power to try that question the commission merchant would have the right to answer that the damage complained of was not the result of a false contention; that the goods were, in fact, damaged before they were shipped, or damaged in transit; and the shipper's contention that they were dumped, or that the price was reduced on account of the condition, would be the issue in controversy.

Mr. COPELAND. Mr. President, if the Senator will yield there, he has that right now.

Mr. SIMMONS. He would have it under this bill.

Mr. COPELAND. There is not any new right granted, but there is a further obligation placed upon him.

Mr. SIMMONS. That is all the right he needs to have. The complaint is against him.

Mr. COPELAND. Against the shipper?

Mr. SIMMONS. No; it is against the commission merchant, that "you have falsely represented that this commodity was in bad condition," or that "you have falsely represented that it was in such condition that it had to be rejected and dumped." That will necessarily have to be the contention of the shipper; and in answer to that contention the commission merchant can set up the fact that the alleged bad condition occurred either before shipment or in transit, and that he was in no way responsible for it.

Mr. COPELAND. But, Mr. President, if the Senator will permit me, if the shipper is licensed he then has placed upon him the same obligation to ship goods that are first class and properly packed, because otherwise the commission man would have no recourse except to the courts, and his own license might be taken away from him, while this man at home having no license, it would not make any difference to him; there is no penalty involved.

Mr. SIMMONS. The decision of that question can only arise upon complaint; and when the complaint is made the commission merchant has the same right to develop the facts before the Secretary of Agriculture that the farmer has to develop the facts that he contends for against the commission merchant.

Mr. COPELAND. Is the Senator now assuming that the shipper also is licensed?

Mr. SIMMONS. No; I see no necessity for licensing the shipper. Of course, Mr. President, as I said the other day, it is true that in nearly all the States, I think—certainly in my State—these goods are inspected before they are shipped, and they are required to be put up in standard packages before they are shipped, and there is verification of that fact at the end of the line where the shipment originates.

The PRESIDING OFFICER. The Senator from Montana is entitled to the floor.

Mr. WALSH of Montana. I had said all that I care to say, Mr. President.

Mr. SIMMONS. Mr. President, I desire to ask the Senator from Idaho one question. I infer from a statement made by the Senator a little while ago that the provisions of this bill would apply only to shipments in carload lots. Does that mean that no shipper would be entitled to the benefits of this bill unless he ships a full carload lot?

Mr. BORAH. Oh, no!

Mr. SIMMONS. The custom is this, I think: Very frequently two or three producers will club together and make up a carload lot.

Mr. BORAH. Certainly.

Mr. SIMMONS. And I had supposed, before the statement made by the Senator gave rise to some little confusion and doubt about it, that a shipment of that sort would come under the provisions of this bill, notwithstanding no one man owned all of the carload.

Mr. BORAH. Certainly; I have no doubt about it.

Mr. OVERMAN and Mr. GEORGE addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. OVERMAN. Mr. President, I am in great doubt about this question, on account of an amendment to this bill that the Senator accepted the other day. Will it not absolutely destroy and abolish commerce between the States, in this way?—Suppose a man in Georgia ships a carload of watermelons to a commission merchant in New York. If the Georgia man, because of some feigned or real claim for damages, can sue the man in New York for $10, and the New York man has to go down to Georgia to defend the suit, and carry his witnesses down there to respond to a claim of $10 damage, think of the millions of suits that would arise in the country, involving men doing business in all the States, getting shipments of perishable products from the different States. Under these circumstances commission merchants would not, I think, take out licenses to do business if they are to be harassed all over the United States, from California to Maine, by suits of all kinds in the Federal courts. This would extend the jurisdiction of the Federal courts farther than was ever dreamed by man could be done. For some real or fancied damage anybody in one State could sue a commission merchant in any other State, and we would have possibly millions of suits in the Federal courts in cases of this kind. Would not that cause every shipping merchant to quit the business? If he is to be sued for every little fancied wrong in any State, he would go out of business.

Mr. BORAH. Mr. President, I did not believe the amendment we agreed to on Friday would have that effect, but I am going to reserve it for action in the Senate and will consider the matter myself. But let me say one thing to the Senator. He says that under the amendment a commission merchant might be sued in a State far from his place of business.

Mr. OVERMAN. Yes.

Mr. BORAH. What is the situation now with reference to the shipper? Can he get any relief whatever? He must travel from a thousand to three thousand miles, and take his lawyers and his witnesses.

Mr. OVERMAN. Yes; but the Senator proposes to give jurisdiction to the Federal courts in this matter, something that has never been done in our history.

Mr. BORAH. I want to say that, while I have reserved that question for further consideration, and intend to reserve it for the purpose of considering it, if it is within my power to have enacted a law which will make it possible to have a suit brought at the home of the producer, I am going to urge it. I do not want to have any question of constitutionality arise, but I believe such a provision would be fair.

Mr. OVERMAN. But the question in my mind is this: When that is done, will not thousands of suits originate in the States for all sorts of claims, whether real or fancied, just or unjust, and will not the commission merchants have to go into the various States and try the cases, and will that not really result in their undoing, so that they will cease to do business?

Mr. BORAH. The condition the Senator fears as to the commission merchant is what is now putting so many producers out of business. They are compelled to ship to States from a thousand to two thousand miles from home, and when the produce reaches its destination they must take the discretion and judgment of another party entirely. If that discretion and judgment do them a wrong, then the shipper has to go to the consignee's place of business in order to sue him, and the result is that the shipper to-day has absolutely no protection against the misconduct of those people.

Mr. OVERMAN. I realize that, and yet I want commerce to go on; I want our people to be able to ship and I want the merchants in business everywhere to be able to do business as shippers.

What is the matter with the present law? Is not that a good law? The Senator stated the other day that it was a fine law with one exception. The Senator, by his measure, would give Federal courts jurisdiction, when that is not provided in the present law. If the present law were enforced, it would carry out all the purposes for which the Senator is contending.

Mr. BORAH. Far from it. The present law has its virtues and is helpful, but under it a shipper in North Carolina has to go to New York in order to bring a lawsuit if one is necessary. That affords no remedy whatever.

Mr. OVERMAN. Does not the present law give a right to the Secretary of Agriculture to investigate, to look into these questions, and send an inspector to find out the truth about the matter?

Mr. BORAH. Exactly; but when he finds out what the conditions are, although a disclosure of the facts may show the shipper to be in the right, the shipper is powerless to enforce his claim because of the distance which he must travel, the expense to which he must go, and the obligations which he must incur in order to maintain his rights.

Mr. OVERMAN. I realize that, and yet his rights can be enforced by the Secretary of Agriculture simply by a notice, and I think they will be enforced in that way.

I submit this for the consideration of the Senator, that this would work an absolute embargo against producers in one State shipping to other States. That would be the effect of it, because men who go into business do not want to be harrassed by suits all over the United States.

Mr. BORAH. That is assuming that every shipper and every producer is a contentious, cantankerous, unprincipled man, who will bring a suit when he has no justification.

Mr. OVERMAN. Not all, but some.

Mr. KING. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I yield.

Mr. KING. Does not the Senator think this extraordinary provision will greatly modify not only our business dealings but our system of jurisprudence? This bill deals with nation-wide activities and thousands of transactions daily. There are tens of thousands of persons engaged in the buying and selling of fruits and vegetables and most of their dealings are interstate in character. They are citizens of the various States, amenable to State laws, and may be sued in State courts. Efforts are being made by some to restrict the jurisdiction of Federal courts and to prevent transfers from State courts to Federal courts on the ground of diversity of citizenship. This measure seeks to extend the authority of the Federal Government and the jurisdiction of the Federal courts and to bring within their cognizance a large part of the business transactions of individuals and corporations. If we are to transfer to executive agencies the power to supervise all business transactions of an interstate character and to the Federal courts all controversies growing out of interstate dealings and transactions, soon the States will be stripped of their authority and the State courts of much of their present jurisdiction.

Under this bill as amended, individuals may be dragged from one end of the continent to the other by suits brought in Federal courts, remote, as stated, from their homes. If a suit is brought, the venue, of course, will be laid by the person who claims a right of action in the State of his residence and the person or corporation with whom he dealt, living thousands of miles away, may thus be sued in the Federal court by the person claiming the cause of action, no matter how trifling his claim may be, and so compelled to defend such action.

Mr. BORAH. What has the Senator to say as to the right of recovery now of a man shipping from his State if damage is done him by a commission merchant in New York, we will say?

The Senator is prefectly aware of the fact that although he may have a just claim, and although the facts may be sufficient to justify a suit, yet by reason of the fact that the shipper must go a distance of three or four thousand miles, take his witnesses, and employ attorneys, there is a denial of justice to him. Is that any more to be forgiven or forgotten than the fact that the

commission merchant may be compelled to go from his place of business?

Mr. KING. Mr. President, of course that is an appealing and plausible argument and has some strong moral grounds to rest upon; but proposed legislation must not envisage one situation only, it should comprehend various situations and meet fundamental questions and conditions. A cherished right under our theory of government is that a person has the right to demand that when sued, it shall be in his own vicinage, that the venue shall be laid where he resides. If a cause of action is alleged against a person the case must be tried in the jurisdiction where the default is alleged to have been committed. One of the complaints against King George was that he dragged persons across the ocean for trial.

Mr. BORAH. They did not have any contractual relations with the fellow who was dragging them.

Mr. KING. No; but a contract or a delict does not carry with it authority or power to be sued in some foreign jurisdiction or dragged thousands of miles from home for trial. There is serious question as to the constitutionality of a Federal statute that authorizes suit to be brought by a citizen, for instance of California, against a citizen of New York in the former State. Of course, if the citizen of New York were found in the State of California and summons was there served upon him the court would have jurisdiction over the defendant. In my opinion if the principle contended for by the Senator from Idaho is incorporated in this bill, namely, that suit may be brought in the Federal courts where the plaintiffs reside, against defendants residing in other States, it will be an obstacle to trade and commercial dealings between citizens of different States; between producers of fruits and vegetables and commission men and purchasers in other States. I concede that if a commission merchant in some remote State, who receives for sale commodities from a person in some other State, is dishonest and deals unfairly with the consignor, the latter may suffer great inconvenience and hardships in securing redress.

Many wholesale merchants and brokers ship their goods to retailers in distant States, and the latter are not always honest, and not infrequently violate their contracts and fail to make payments for the merchandise even after the same has been sold. If a suit is brought by the vendor, he has to seek redress where the delinquent resides. If I desire to make a contract with the Senator from Idaho and I lived in New York, I would understand that if he breached the contract I would have to seek relief in the courts of his State, and he would likewise understand that if I were guilty of default his cause of action would have to be tried where I reside.

But we are now to accept the view that suits between residents of different States can be brought in the Federal courts under the interstate-commerce provision of the Constitution, if by any theory the matter involved in the suit can be colored with an interstate dye, and the defendant be compelled to answer in the court where the suit is brought though it be thousands of miles from his domicile.

Mr. BORAH. Mr. President, suppose a commission merchant sends his agent to the State of Idaho or the State of Utah and makes a contract, he comes to the State for the purpose of carrying on his business, he selects that jurisdiction as a place to make his contract, to initiate his business. Is there anything so manifestly unjust, if that contract is violated, in providing that the place where it was made shall be the place it shall be adjudicated?

Mr. BLEASE. Mr. President, will the Senator from Idaho yield to me for a question?

Mr. BORAH. I yield.

Mr. BLEASE. Suppose, under the proposed licensing system, a broker should get a license and should say to the shipper that, instead of shipping to him, the broker, he must ship to himself, the shipper, and that when the goods arrived, for instance, in Washington from my State, then he, the broker, would act here only as the agent of the shipper. Is there anything in this bill that would protect the shipper under those circumstances?

Mr. BORAH. Of course that could not occur without the consent of the shipper.

Mr. BLEASE. I understand; but suppose there are three brokers here, or half a dozen, and they should agree among themselves that they would not handle produce, or have it shipped to them, except that the shipper from South Carolina, or from Idaho, for instance, should ship to himself. For instance, the Senator would ship to WILLIAM E. BORAH, at Washington, D. C., and the goods would be here for him, and the broker would simply be his agent, instead of acting as a broker.

Mr. BORAH. If I should make that kind of a contract, I would have to live up to it.

Mr. BLEASE. Suppose they should refuse to handle goods otherwise? Is there anything in this bill by which shippers could get any redress?

Mr. BORAH. No; under those circumstances I do not think the bill would cover the facts. The great, responsible commission merchants and their association are not finding fault with this bill to the extent which has been indicated in the debate here for the reason that the bill would never in any way injure them if they lived up to their contracts and dealt fairly with shippers.

I want to say, before I sit down, that I shall consider the matter which has been suggested to me by the Senator from North Carolina; indeed, I have had it under consideration since Friday. Of course I do not want to put anything in the bill which will affect its constitutionality, but if this legislation goes through I want it to be effective for the purpose of protecting the producer and the shipper.

Mr. OVERMAN. So do I.

Mr. BORAH. If it is not such a measure as would give them protection, I do not care to engage in the pastime of passing legislation designed to protect them but which would not do so.

Mr. WALSH of Montana. Mr. President, the discussion lately indulged in, precipitated by the Senator from North Carolina, is somewhat aside from the amendment pending before the Senate. Indeed, that has been disposed of. We acted upon it on Friday last. But I desire to say, in that connection, and particularly for the benefit of my friend the Senator from Utah, that the evil he sees is very much magnified.

In the first place, nearly all of those to be reached by this bill are corporations, and those corporations are doing business in the various States from which shipments are made. They have their agents there soliciting business. Under the laws of most States they are required to appoint agents in the States upon whom service or process can be made, and now in most of them, at least in many of them, their agents can be served in the States in which the corporations do business; that is to say, in the States in which the shipments originate. It is only those who, by some machination, are able to relieve themselves from the operation of the State laws requiring the appointment of agents there, who would fall under the provisions of this amendment.

Mr. KING. Mr. President, will the Senator yield?

Mr. WALSH of Montana. I yield.

Mr. KING. The Senator may have more accurate information than I possess, but my understanding is that the overwhelming majority of the commission merchants of the United States do not have agents in all parts of the United States where they do business or from whom the fruits and vegetables handled by them are shipped. I know of commission merchants who receive commodities from States in which they do not reside and in which they do not have representatives. They secure patrons by advertising or because of their known character for fair dealing and integrity. One satisfied customer becomes an agent or missionary and brings other customers. The result is that thousands of commission merchants and dealers carry on extensive business undertakings without representatives in other States.

Mr. OVERMAN. Mr. President, may I say that I do not know of a single corporation doing a commission business in the purchase or sale of perishable products in my State. It is done by the little merchants who order a carload of melons from Georgia or a carload of beans from Florida, but there is no corporation there doing business that I know of, and I have never heard of one engaged in that business in my section. I ask my colleague if I am not correct.

Mr. SIMMONS. Mr. President, I think I can tell the Senator there are dozens of the small dealers right in my section of the State now, but I do not know about any corporations.

Mr. OVERMAN. I was referring particularly to corporations. Can the Senator tell me if he knows about any corporation?

Mr. SIMMONS. No; I do not know a thing about any corporations transacting a commission business down in our State.

Mr. OVERMAN. I do not know of one in North Carolina. That business is done by the small merchants who order a carload and distribute it out among the people. They are not corporations.

Mr. SIMMONS. What I meant to say to my colleague was that the common custom of the commission merchants soliciting business in that section of the country is to have somebody there at the time of the market for the purpose of soliciting shipments.

Mr. OVERMAN. But they are not corporations?

Mr. SIMMONS. No; not that I know of.

Mr. WALSH of Massachusetts. Mr. President, may I ask the Senator from Montana how many commission merchants

would be affected by this provision of the bill? I have heard that it is estimated there are 25,000. Does the Senator have any information on that matter?

Mr. WALSH of Montana. No; I have not. The principle of the amendment is by no means new. Exactly the same situation existed in connection with the transportation business, resulting in what is know as the Carmack amendment. Nearly all of the railroads taking shipments of goods across the continent or to any considerable distance, if the shipment was to go over some other or connecting line, would enter into a contract with the shipper to the effect that if the goods were lost or damaged en route the only action would lie against the railroad company on whose line the loss of damage occurred and not against the original company. For instance, if goods were shipped from Helena, Mont., by the Northern Pacific Railway to Boston, the goods would pass over the Northern Pacific to St. Paul, over the Wisconsin Central, the Chicago, Milwaukee & St. Paul or the Chicago & North Western to Chicago, over some other connecting line between Chicago and New York, and finally over the New York, New Haven & Hartford or some other New England road from New York to Boston; so that if the goods were lost or destroyed en route between New York and Boston the only thing the shipper in the State of Montana could do was to travel away off to the State of Connecticut or perhaps Rhode Island or Massachusetts and sue there.

But the Carmack amendment gave the right of action against the railroad company taking the original shipment notwithstanding such a provision in the contract. In other words, it compelled the railroad company to go to the point of shipment in order to make defense against the action. Of course, if the Northern Pacific under the circumstances I have indicated became liable it would have its action against the New York, New Haven & Hartford or whatever road was directly responsible for the loss, so that road, in order to protect itself, was obliged to travel to the city of Helena or some other point in Montana in order to defend the action. That legislation has been very generally approved and no one has undertaken to criticize it in any sense whatever. It is exactly the same here. That legislation was rendered necessary by circumstances similar to those which make imperative legislation of the character now before us.

Mr. SACKETT. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. GLENN in the chair). Does the Senator from Montana yield to the Senator from Kentucky?

Mr. WALSH of Montana. I yield.

Mr. SACKETT. In view of the fact that this does not change the venue for fresh fruits and vegetables, ought it not go further and change it for other products of the country like dairy products which are shipped from the several States?

Mr. KING. And for coal and cotton.

Mr. WALSH of Montana. That would really be aside from the purposes of the bill.

Mr. SACKETT. May I ask the Senator from Idaho if there has been any effort or suggestion made that dairy products should be included within the terms of the bill?

Mr. BORAH. We have confined the bill exclusively to fresh fruits and vegetables.

Mr. SACKETT. And yet they are subject to the same kind of consignment.

Mr. BORAH. Exactly; but fresh fruits and vegetables are upon a different basis.

Mr. SACKETT. The same criticism would be made on a shipment of cream and milk, which are perishable.

Mr. BORAH. The dairymen have not asked for it.

Mr. SACKETT. But in view of the fact that the bill gives the right to the producer, which is a valuable right to him in the way of change of venue, it seems to me that legislation ought to cover the dairymen as well.

Mr. BORAH. I would be willing to consider a bill of that kind, but I would not want to undertake to include all kinds of products in this bill.

Mr. SACKETT. In the section under discussion—section 3—occurs the term "fraudulent charge." Is that used synonymous with fee or does it mean "statement"?

Mr. BORAH. "Statement" and also "charge" would cover a fee or charge for services which were not rendered.

Mr. SACKETT. But any illegal fee as well?

Mr. BORAH. Yes.

Mr. SACKETT. The Senator thinks the word will cover the two classes?

Mr. BORAH. I think so.

Mr. SMITH. Mr. President, I have a communication from a party very much interested in the bill who has suggested that the word "charge" be eliminated and the word "representation" be substituted, but I understand the Senator from Idaho understands the word "charge" to mean any money charge.

Mr. BORAH. I would be willing to have it read "charge or representation."

Mr. SMITH. I think that word should be inserted so it would read "any fraudulent charge or representation." It is not necessary for me to enlarge on that point, but just to call attention to the fact that it does not quite cover the case.

Mr. BORAH. When we come to it I will have it changed.

Mr. COPELAND. Mr. President, it seems to me that what is good for the goose is good for the gander. If I understand the present situation, the Senator from Idaho has accepted the amendment proposed by the Senator from Montana and that the licensing plan shall not apply to small shippers. Am I right in that understanding?

Mr. BORAH. I have accepted it, but it has not been acted on yet.

Mr. COPELAND. I want to speak against it before it is acted upon.

The bill, on page 3, describes "unfair conduct." It says that it shall be unlawful "for any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement concerning the condition, quality, quantity, or disposition of, or the condition of the market for, any perishable agricultural commodity," and so forth; but if the amendment is accepted it means that it is unlawful for any licensed person, commission merchant, dealer, or broker to make a statement for a fraudulent purpose, but it is not unlawful for the small shipper to make any such statement.

Mr. WALSH of Montana. I spoke to the Senator from Idaho about it and was going to propose to him that I would like to subject anyone who makes a fraudulent statement about these matters to the penalties of the law, so I am going to suggest that in line 18, page 3, we should strike out the words "commission merchant, dealer, or broker" and insert the word "person," so it would read: "for any person to make, for a fraudulent purpose, any false or misleading statement," and so forth.

Mr. COPELAND. I would like to inquire if that would be satisfactory to the Senator from Idaho.

Mr. BORAH. I apologize. I was interrupted at the moment and did not hear the Senators suggestion.

Mr. WALSH of Montana. The Senator from New York referred to the provision in section 3 and called attention to the fact that in line 18 it is provided that it shall be unlawful "for any commission merchant, dealer, or broker to make, for a fraudulent purpose, any false or misleading statement," but that the implication is that it is not unlawful for a shipper or producer to make any unlawful statement. I said to him that I had thought of suggesting to the Senator in charge of the bill that the words "commission merchant, dealer, or broker" be stricken out and the word "person" inserted.

Mr. BORAH. I would prefer to have it read "for any commission merchant, dealer, broker, or producer to make, for a fraudulent purpose, any false or misleading statement," and so forth.

Mr. COPELAND. Or shipper.

Mr. BORAH. Or shipper.

Mr. COPELAND. That would satisfy my objection.

Mr. KING. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Utah?

Mr. COPELAND. I yield.

Mr. KING. Then the Senators from New York, Idaho, and Montana, to be consistent, ought to be willing to support a measure providing that any person who makes any false statement or fraudulent representation respecting any matter relating to an interstate transaction should be subject to Federal punishment. Under this view, Federal laws are to govern and control substantially all the activities of the people, and take the place——

Mr. COPELAND. Of the Ten Commandments?

Mr. KING. Yes; of the Ten Commandments; and all of the reserved powers of the States, including their police powers. The interstate-commerce clause of the Constitution is being perverted and prostituted, and used as a bulwark behind which the opponents of individual rights, as well as the rights of the sovereign States, organize their forces to project measures and policies which will materially modify our form of Government. That the States are being undermined by these attacks is obvious to every student of public affairs. We are rapidly advancing toward a nationalistic bureaucracy and Federal paternalism, which challenge the form of Government set up by the fathers, and the democratic institutions under which our liberties have been preserved. Functions and duties of the

States are being performed by the Federal Government, and nearly every phase of individual and community life is being effected or controlled by Federal authority and by the ever-increasing Federal bureaus and agencies and their armies of Federal employees. Congress multiplies Federal statutes which create numerous offenses and commit to bureaus and Federal organizations authority to promulgate rules and regulations for the violation of which severe penalties are prescribed. Federal penal codes are being enacted which traverse ground covered by State statutes.

More and more the National Government is taking over control of business and providing regulations for every form of industry. By this bill we are to license all who produce fruits and vegetables and sell and dispose of the same, and all those who act as dealers or commission merchants or handle such products in their journey from mother earth to the ultimate consumer. And the bill as drawn requires the producer, if he sells in interstate channels a carload or more of his own products, to apply to a Federal bureaucrat in Washington for a license to sell his own products; and the person to whom he sells his fruits or vegetables residing outside the State in which the vendor lives must procure a license from this same Federal authority and be subjected to greater or less restrictions imposed by the Secretary of Agriculture. And the retailer who has a large circle of patrons, who, to supply their wants, procures a carload of fresh fruits or vegetables in a neighboring State, must obtain a Federal license under penalty of fine if he fails so to do. The bill provides machinery to deal with the tens of thousands who produce and buy and sell fruits and vegetables, and, of course, this machinery must be controlled and operated by a mighty host of Federal employees.

And, of course, under this construction of the interstate-commerce clause, and in view of this national paternalistic policy, other branches of trade and industry will be brought under Federal surveillance and control. May we not expect, sooner or later, Federal laws requiring licenses in order that citizens may pass from one State to another?

Mr. President, there has been much injurious legislation in this and other countries enacted to meet an unsatisfactory situation, but the evil effects thereof have far outweighed the benefits derived. And such legislation has been used as a precedent for additional enactments which have been followed by still greater evils. Legislation which encroaches upon individual rights or local self-government or fosters bureaucracy or strengthens the hands of a powerful central government should be looked upon with distrust. Now, when socialistic heresies and national paternalism are finding growing support there should be a challenge to every measure and every policy which undermines the States and destroys individualism. Let us preserve the States in all of their vigor, and deny to the Federal Government the right to exercise any authority which has not been committed to it and which, if committed, it is essential that it should exercise in the interest of the people and for the preservation of the Government. The States under their police powers can and will deal with many of these questions which are now being dealt with by the Federal Government.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Idaho?

Mr. COPELAND. In just a moment I will yield. I assume from what my friend from Utah says that he does not believe we can make the people good by the enactment of law.

Mr. BORAH. No; but we can establish a basis for contract and liability.

Mr. KING. Mr. President, I have no doubt that punitive statutes do have some effect upon our conduct, but I still believe in State rights and in individual rights. I know it is a very unpopular view for anyone to express in this body or perhaps elsewhere. If the States are to be submerged, and we are to turn over to bureaucrats here in Washington, to the Federal Government, and to six hundred or seven hundred thousand Federal employees—they will soon be multiplied to double that number—the lives, fortunes, and business activities of the people of the United States, instead of having sovereign States we shall have mere geographical expressions, all of the people and all of the States being under the dominant control of a powerful despot functioning here in Washington.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Idaho?

Mr. COPELAND. I yield.

Mr. BORAH. As I understood the Senator from New York, he would be satisfied with the insertion of the words "producer or shipper" after the word "broker" in lines 18 and 19?

Mr. COPELAND. I shall be satisfied, so far as that section is concerned.

Mr. BORAH. Of course, I did not expect the Senator to be entirely satisfied.

Mr. COPELAND. No; that perhaps would be impossible when this particular bill is pending.

Mr. BORAH. Yes; I have no doubt of that.

Mr. COPELAND. However, I think the addition of those words will make the bill better; but I am not quite through.

Mr. BORAH. I hope that this amendment may be now acted on, unless the Senator from New York wishes to object to it.

Mr. COPELAND. No.

The VICE PRESIDENT. Will the Senator state the amendment?

Mr. WALSH of Montana. There is an amendment already pending, is there not?

The VICE PRESIDENT. There is a pending amendment, but this amendment may be adopted by unanimous consent.

Mr. WALSH of Montana. I take it, then, that the discussion on the amendment has been concluded?

Mr. COPELAND. The Senator from Montana refers to the amendment releasing the small producers from the license requirement, does he?

Mr. WALSH of Montana. Releasing both the large and the small producers from the license requirement.

Mr. COPELAND. I should like to say something about that, but I am perfectly willing to have the other amendment adopted.

The VICE PRESIDENT. That amendment may be offered later. The Senator from New York has the floor.

Mr. COPELAND. Mr. President, once more I wish to say that I think it would be not only unfair but unwise to accept the amendment proposed by the Senator from Montana [Mr. WALSH]. The Senator from Idaho [Mr. BORAH] may doubt it, but I am anxious to have the producers of the country benefited; I think I have shown that disposition on occasions when I have voted for various farm measures which have been introduced here; but it is my opinion that the adoption of the amendment would be very harmful to the small shippers because, just as sure as fate, the licensed commission merchants of the cities will not buy perishables from the unlicensed shippers of the country. Why should they do so?

There is not a section of the country where there are not brokers who are willing to become licensed under the provisions of this bill if it shall become a law. They then immediately become responsible and responsive to all the provisions of the proposed act, including the same penalty which may be inflicted upon the commission merchant in the city, the great penalty of the revocation of his license. I know how valuable such licenses are. Take the city of New York: A man who has a license to operate a chicken slaughterhouse or a creamery or to engage in any trade which is licensed has in that license a very valuable possession involving the right to do business in that particular line. So when a commission house is licensed it will prize the fact that it is licensed, and it will fear the effect of the violation of the conditions under which that license may be kept, because this bill places arbitrary power in the hands of the Secretary of Agriculture to cancel the license if the terms of the proposed law shall be violated.

The commission merchant is not going to deal with an irresponsible, unlicensed, fly-by-night producer or shipper in the country, because if such person in the country makes false representations or fraudulent statements and sends his products on, what is the penalty? There is not any penalty in the world imposed on him. There is not any recourse on the part of the commission merchant; there is no mutuality in the arrangement at all; it is utterly unfair and one-sided.

However, beyond that it would be unwise for the shippers in the country to accept a provision of that character, because it would mean that the brokers in the country, who are recognized by the Secretary of Agriculture and licensed by him, will get the business; and so the country shipper who is unlicensed will be just as much at the mercy of the broker, of the commission merchant, as he is at present. I can see no reason why, the Senator from Montana being willing to reduce the license fee to $1, any honest man in the country should not be willing to take out a license and thus bring himself under the penalties as well as the benefits of the law. There are many benefits in the law. It is not alone that there will be a club held over the commission merchant, preventing him from indecently and unlawfully and wrongfully dumping goods which are susceptible of being sold at a fair price, but also this bill, if it should become a law, would make the Secretary of Agriculture a collecting agent, because on page 9, in subdivision b, it is provided:

If any commission merchant, dealer, or broker does not comply with an order for the payment of money—

Then a certain procedure may be taken which will end ultimately in the revocation of his license. So, Mr. President, I do not see that this bill, as now framed, is fair to the producer.

There are certain things I want to say, and perhaps I will say them now, since I am on my feet, about section 7 on page 6.

Mr. GLENN. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Illinois?

Mr. COPELAND. I do.

Mr. GLENN. I am just wondering what character of injury the Senator fears the producer might inflict upon the commission merchant. I wonder what the Senator has in mind as to what may happen.

Mr. COPELAND. A producer can write a commission man in New York and say, "I have half a carload or a carload of the finest watermelons ever produced; every one of them weighs 40 pounds; it is red and luscious in the interior; it has a most delicious champagne flavor and is in every way the finest melon ever produced." He can ship them on to the innocent commission man on the Bowery in New York, who has no recourse against the untruthful gentleman living somewhere in the country. If the watermelons so represented were shipped by a broker in Peoria, Ill., and did not measure up to the statements and recommendations made of them, a complaint of the commission merchant in New York to the Secretary of Agriculture would result in the revocation of the license of the Peoria man.

Mr. GLENN. But what happens to that carload of watermelons when they get to New York? The commission merchant examines them, sells them, takes out his commission, and remits to the producer, does he not? So if they are not good the consumer suffers, and not the commission merchant.

Mr. COPELAND. This is what happens: The honest commission man in New York receiving the watermelons proceeds to discard, dump, and destroy them. They are put on the dump over in Flushing. That is what he does with them. Then the man back in Peoria makes complaint to the Secretary of Agriculture at any time within nine months. When the transaction has been entirely forgotten by everybody concerned in New York the Peoria man appears before the Secretary of Agriculture and says, "This New York commission merchant has robbed me." That is what happens. If the man in Peoria, the shipper in Peoria, is licensed——

Mr. GLENN. Let us pursue the first suggestion a little farther.

Mr. COPELAND. Very well.

Mr. GLENN. Before anything happens to the commission merchant the producer, under this bill, must prove that the commission merchant has dumped the products without reasonable cause, has he not? He has to show that before there is any recourse?

Mr. COPELAND. The burden of proof is on him, but he can do that as late as 8 months and 29 days after the transaction has taken place.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Idaho?

Mr. COPELAND. I yield.

Mr. BORAH. The bill provides that the commission merchant, dealer, and so forth, shall keep a record and memorandum of his transactions. So he has his record complete, and a man shipping from a distance is wholly at his mercy.

Mr. COPELAND. If he is a licensed commission man, I assume from section 4 of the bill that the Secretary of Agriculture is going to determine what sort of person he is. The Secretary is going to determine the question, Is he equipped to do this business; is he morally equipped to do it? Subsection (b) of section 4 provides:

> The Secretary may by regulation prescribe the information to be contained in such application.

I have seen thousands of such applications, and in connection with them all manner of questions are asked; such, for instance, as, Have you ever been arrested? Have you ever been sued for nonpayment of debt? All sorts of questions are asked, so that before a man gets a license under this bill he will be very well indorsed by his community and by those who surround him.

Mr. BORAH. I am afraid not.

Mr. COPELAND. Then the bill is not any good. I hope what I have suggested is true; otherwise, what is the use of having a bill if we are not going to make it worth while? The purpose of this bill, as I understand, is to do away with dishonest trading, to do away with fraudulent acts which are familiar to everybody who knows anything about the business. That is exactly what is written in the bill, that the commission merchant, dealer, or broker without a license can not transact business; that any person desiring to have a license shall make application to the Secretary, and "the Secretary may by regulation prescribe the information to be contained in such application."

The Secretary can go just as far as he likes with it, and he should do that if this bill is going to be of any value whatever to the public. In order to make certain that men engaged in the industry are honest and honorable men, those questions are going to be asked. We do not have to have any laws or any licenses to protect society against honest men. That is not the purpose of this bill. The Senator from Idaho has no thought in his mind about the honorable, upright man in the industry. He is thinking about those who are given to fraudulent acts and to dishonest practices. That is the purpose of the bill; and if we propose to pass any such bill, we should pass one which will guarantee the public against fraudulent acts which are notorious in certain quarters.

Now, Mr. President, referring once more to section 7, I think the time limit is entirely too long. Would not the Senator from Idaho be willing to reduce the number of months to three?

Mr. BORAH. When we dispose of other matters, I am willing to make a reduction, but not quite as much as the Senator suggests.

Mr. COPELAND. Very well. Then I think, Mr. President, so far as I am concerned, I have said all I care to say at this time, except to make a brief reference to subsection (b).

Mr. WALSH of Montana. Will not the Senator defer that until we can dispose of the pending amendment? There is another matter to which I wish to call attention.

Mr. COPELAND. I will be very glad to do so.

The VICE PRESIDENT. The question is on the amendment proposed by the Senator from Montana.

The amendment was agreed to.

Mr. WALSH of Montana. Mr. President, I desire to call the attention of the Senator to another provision of the bill at the top of page 6. Perhaps this will interest the Senator from New York. This is a continuation of section 6, beginning at the bottom of page 5:

> (a) If any commission merchant, dealer, or broker violates any provision of section 3 he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

The next subsection prescribes how that liability shall be enforced:

> (b) Such liability may be enforced either (1) by complaint to the Secretary as hereinafter provided, or (2) by suit in any district court of the United States of competent jurisdiction; but this section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this act are in addition to such remedies.

On page 9, subdivision (b), provision is made for recourse not only to the Federal court, as provided in subdivision (b) of section 6, but for recourse to the State court. It reads:

> (b) If any commission merchant, dealer, or broker does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker—

With the amendment heretofore agreed to—

> in which case service may be made on the defendant in any State in the United States, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises.

I quite approve of the provision in section 10, page 9, by which the order may be enforced by proceedings either in the Federal court or in the State court; but under subdivision (b) of section 6 resort must be had only to the United States court. I see no reason why that should be the case; and I accordingly move——

Mr. COPELAND. Mr. President, just a moment before the Senator does that. What about subsection (d), page 11, of section 13?

Mr. WALSH of Montana. That refers to another matter. I shall be glad to refer to that directly.

Mr. COPELAND. Very well.

Mr. WALSH of Montana. I accordingly move, Mr. President, to amend in line 3, page 6, by striking out the word "district" and the words "of the United States," so that it shall read:

> By suit in any court of competent jurisdiction.

Mr. BORAH. Mr. President, I think that amendment should be accepted. It harmonizes with the other provision of the bill.

The VICE PRESIDENT. Without objection, the amendment is agreed to.

Mr. WALSH of Montana. Now, I desire to make another suggestion, Mr. President. After that portion of subdivision (b) of section 10 which I have read occurs the following:

Such suit in the district court—

That is, the district court of the United States—

shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent state of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

Observe that that paragraph applies only to the suit in the United States district court. It does not apply if the suit is brought in a State court. Now, I apprehend that perhaps in framing the bill it was considered beyond the power of Congress to prescribe what the rule of evidence shall be in the State courts, or in what particular cases costs shall be allowed, or in what particular cases attorneys' fees shall be allowed; but the bill does proceed upon the theory, which I have no doubt is sound, that these liabilities created by a Federal statute may be enforced in a State court. We have many instances of that character. The liabilities imposed by the workmen's compensation acts, although created by a Federal court, are enforceable in a State court. If the provision to which I have last referred—the concluding portion of that paragraph—could be made applicable to the State courts, I should like to see it done; and that would be accomplished by cutting out the words "in the district court" in lines 21 and 22, so that it would read:

Such suit shall proceed in all respects like other civil suits for damages—

And so forth.

Mr. BORAH. The only question which arises is whether or not that is a sound proposition—that is to say, legally. Can we do that?

Mr. WALSH of Montana. Suppose that amendment were adopted; then it would become a matter of construction as to whether it could be done or not. I am not prepared to say. I suggest the matter to the Senator, and perhaps he can give it further thought, and the matter can be referred to again in the Senate.

Mr. BORAH. Very well.

Mr. WALSH of Montana. Mr. President, I said that I should refer to subdivision (d) of section 13. That refers to the case of disobedience to a subpœna of the Secretary or any of his examiners. He may subpœna witnesses in order to ascertain the facts in relation to any complaint, and so on.

I am inclined to think that there may be very grave doubt as to whether the Congress could invest the State courts with power to issue subpœnas of that character. Of course, the Congress has invested in the State courts for a long time the power to grant naturalization papers and to discharge other duties; but I apprehend that there is a limit to the power of the Congress to authorize State courts to act in these matters.

Mr. COPELAND. Mr. President, may I ask the Senator a question? Does this mean that a court in New York could compel the attendance of a small broker in Georgia, or Florida, or Montana, or Idaho?

Mr. WALSH of Montana. I think not. I believe that the general statute concerning witnesses would be applicable. That statute provides that a witness can not be compelled to attend outside of the district in which he resides if it is more than 100 miles from the place of his residence; and I have no doubt that that statute would apply here. We have been considering the question as to whether that statute might not very properly be amended so as to authorize the district judge, upon petition, to direct the service of subpœnas anywhere within the United States upon a showing of necessity; but we have never enacted such a law. The law as it now exists is as I have stated.

Mr. COPELAND. There is a possibility, however, I take it, that this provision might be interpreted to mean that these witnesses could be brought in from any part of the United States.

Mr. WALSH of Montana. No.

Mr. BORAH. Not without additional legislation.

Mr. WALSH of Montana. No; I feel very certain that the general statute in relation to that matter would govern.

Mr. BORAH. Mr. President, on page 3, lines 18 and 19, after the word "broker," I propose to insert the words "producer or shipper."

The VICE PRESIDENT. Without objection, the amendment is agreed to.

Mr. BORAH. And on page 4, in line 19, strike out the figures "$10" and insert "$1."

The VICE PRESIDENT. Without objection, the amendment is agreed to.

Mr. BORAH. On page 6, section 7, line 11, I suggest that in lieu of the word "nine" we insert "five." That refers to the length of time within which application may be made to the Secretary.

Mr. COPELAND. Why not "three"?

Mr. BORAH. Considering the distance the producer is from the place where the commission merchant is located, I think that is rather short.

Mr. COPELAND. Then let us compromise on "four."

Mr. BORAH. Very well.

The VICE PRESIDENT. The Senator from Idaho offers an amendment, in line 11, page 6, changing the word "nine" to "four." Is there objection? The Chair hears none, and the amendment is agreed to.

Mr. KENDRICK. Mr. President, I desire to ask the Senator from Idaho whether amendments are in order at this time?

Mr. BORAH. They are.

The VICE PRESIDENT. The bill is still before the Senate as in Committee of the Whole and open to amendment.

Mr. KENDRICK. I offer the amendment which I send to the desk.

The VICE PRESIDENT. The amendment will be stated.

The LEGISLATIVE CLERK. It is proposed to insert the following as a new section, to be numbered "14" and to renumber the succeeding sections "15," "16," and "17," respectively:

SEC. 14. The Secretary is hereby authorized, independently and in cooperation with other branches of the Government, State agencies, and/or any person, whether operating in one or more jurisdictions, to employ and/or license inspectors to inspect and certify, without regard to the filing of a complaint under this act, to any interested person the class, quality, and/or condition of any lot of any perishable agricultural commodity when offered for interstate or foreign shipment or when received at places where the Secretary shall find it practicable to provide such service, under such rules and regulations as he may prescribe, including the payment of such fees and expenses as will be reasonable and as nearly as may be to cover the cost for the service rendered: *Provided*, That fees for inspections made by a licensed inspector, less the percentage thereof which he is allowed by the terms of his contract of employment with the Secretary as compensation for his services, shall be deposited into the Treasury of the United States as miscellaneous receipts; and fees for inspections made by an inspector acting under a cooperative agreement with a State, municipality, or other person shall be disposed of in accordance with the terms of such agreement: *Provided further*, That expenses for travel and subsistence incurred by inspectors shall be paid by the applicant for inspection to the disbursing clerk of the United States Department of Agriculture to be credited to the appropriation for carrying out the purposes of this act: *And provided further*, That certificates issued by such inspectors shall be received in all courts of the United States as prima facie evidence of the truth of the statements therein contained.

Mr. KENDRICK. Mr. President, this amendment would authorize in permanent legislation the inspection service now conducted by the Bureau of Markets under authority provided from year to year in the annual appropriation act. It would also provide for inspection in small markets which can not now be covered with existing facilities. The bureau now maintains salaried inspectors of fruits and vegetables in 40 of the important terminal markets. These inspectors are available upon request of the shipper or receiver or other interested person to inspect and certify as to the grade or condition of fruits and vegetables. The inspection service under the bureau can easily be made available for the bill now under consideration should it become a law.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Wyoming yield to the Senator from Idaho?

Mr. KENDRICK. I do.

Mr. BORAH. May I ask the Senator what additional charge or expense—what additional agents and inspectors—this amendment would be likely to require?

Mr. KENDRICK. The same corps of inspectors under the present law would be employed under the proposed law and the only additional cost would be incurred for inspection in small markets and out-of-the-way places where, in some instances no doubt, it would be necessary to either employ an inspector for

that particular emergency or in lieu thereof to send an inspector on request from one of the terminal markets. In either event there would undoubtedly be some slight additional cost to cover traveling expenses. From my understanding of the provisions of the amendment, the purpose is to authorize the Secretary to arrange for inspection where it is asked for in out-of-the-way places. The language of the amendment is broad enough to take care of that.

Mr. BORAH. Will this amendment result in incurring any additional expense, except for the possibility of establishing inspectors in out-of-the-way places where there are none now?

Mr. KENDRICK. It would not.

Mr. BORAH. Mr. President, in what respect does this amendment differ from these provisions which the Senator says have been incorporated in appropriation bills?

Mr. KENDRICK. In the main, it grants the Secretary additional authority to employ other inspectors where there are none available at the present time.

Mr. COPELAND. Mr. President, may I ask the Senator if he would be willing to change the language where it says "Government, State agencies, and/or any person," so as to read "Government, State, or municipal agencies," and also where it says "agreement with a State," to add the word "municipality," for the reason that the city of New York, for instance, has milk inspectors who go out through the country districts? They might, under an arrangement of this sort, add this duty to their other duties.

Mr. KENDRICK. My impression is that such inclusion would be unnecessary, because in all of the large cities there is a force of Government inspectors maintained at the present time. If I am not mistaken, there are 10 in the city of New York.

Mr. COPELAND. The Senator has this in mind, however, that he is seeking to cover out-of-the-way places, not the cities.

Mr. KENDRICK. Yes.

Mr. COPELAND. It so happens that we have here in the city of Washington country milk inspectors, who go out through Maryland and Virginia to inspect dairies. They are experts in food supervision, and they might very well, if an arrangement could be made, add this particular thing to their other duties.

Mr. KENDRICK. I think the inclusion of those words would not in any way modify or change the meaning of the amendment.

Mr. COPELAND. Does the Senator accept it?

Mr. KENDRICK. Yes; I will accept the modification.

The VICE PRESIDENT. Does the Senator modify the amendment so as to include the suggestion of the Senator from New York?

Mr. KENDRICK. I do.

The VICE PRESIDENT. The question is on agreeing to the amendment as modified.

Mr. PHIPPS. Mr. President, at least for the purpose of discussion, I send to the desk an amendment which I offer as a substitute for the pending amendment.

The VICE PRESIDENT. The Secretary will report the amendment.

The LEGISLATIVE CLERK. On page 4, line 4, at the end of section 3, add a new paragraph as follows:

> Whenever upon the arrival of a shipment of agricultural produce in interstate or foreign commerce it appears that such produce is not in marketable condition, it shall be the duty of the consignee to notify promptly the inspector of agricultural products for the district and request an inspection of same. If no such inspector has been appointed the mayor of the town or city shall be notified. It shall also be the duty of the consignee to notify the shipper by telegraph that the shipment has arrived in bad condition.

The VICE PRESIDENT. The Senator from Colorado proposes that as a substitute for the amendment proposed by the Senator from Wyoming?

Mr. PHIPPS. I do. It seemed to me that where disputes are likely to arise, the best evidence of a well-grounded complaint is the report of an inspector who has examined the goods in question. This bill applies solely to carload shipments, and carload shipments of perishable agricultural products are sent only to communities where, as a rule, there is a qualified inspector maintained by the municipality or the State, or by the Department of Agriculture.

The consignee who finds goods to be in bad condition should, I think, call for proof which could be given by an inspector. He notifies the inspector, he also notifies the shipper, and that puts the shipper on notice, so that if he has a correspondent or friend at the point of destination he can be called in, but as a shipper, knowing the law, he will know that it was the duty of the consignee to call for an inspection, and even in the absence of a qualified inspector, to call the attention of the mayor of the community to the condition of the shipment.

Mr. COPELAND. Mr. President——

The VICE PRESIDENT. Does the Senator from Colorado yield to the Senator from New York?

Mr. PHIPPS. I yield.

Mr. COPELAND. It would seem to me that instead of proposing it as a substitute for the amendment offered by the Senator from Wyoming, it should be offered as an amendment to his amendment, or as a separate amendment to the bill, because the amendment of the Senator from Wyoming provides for another work, a work in the country, where there is to be work done by the inspectors, and not after the receipt of the product in the cities. Am I not right about that?

Mr. KENDRICK. The Government, through the Bureau of Markets, at the present time has a competent force of inspectors in as many as 40 municipal markets. During the fiscal year of 1928 this force inspected 32,000 carloads of fruits and vegetables. In addition to the inspection service referred to in the terminal markets, the bureau is cooperating with 38 States in the inspection of fruits and vegetables at points of shipment. During the fiscal year of 1928 more than 210,000 cars of fruits and vegetables were inspected under cooperative agreements with the States. This service is growing rapidly. I am informed by the bureau that the inspectors at points of shipment are not salaried employees of the department but are employed by the States and paid from the fees collected for inspections. The proposed amendment would enable the Secretary of Agriculture to issue licenses to competent persons at any point where an inspection might be necessary and where a suitable cooperative arrangement could not be made with State officials. In such cases the Secretary of Agriculture would be authorized to permit the licensee to be compensated for his services from the fee charged to the applicant. That seems to be the only possible arrangement that can be made for providing inspection facilities in small markets where the number of inspections would be too small to justify payment of the salary of a Government representative.

Mr. PHIPPS. Mr. President, my objection to the amendment as proposed by the Senator from Wyoming lies in the fact that it would call for the employment of additional inspectors, and in districts where only occasionally or rarely would there be a shipment of a carload of perishable agricultural products. It seemed to me that in a case of that kind, where there is no qualified inspector located there, then the mayor of the community could be called upon, the idea being that no claim of bad condition should be filed by the consignee unless he backed it up by some proof taken at the time of the arrival of the shipment, and also that he notify the shipper that the goods have arrived in bad condition.

Mr. DILL. Mr. President, will the Senator yield?

Mr. PHIPPS. I yield.

Mr. DILL. I think the point of the Senator from New York is well taken. This amendment provides for inspection when any perishable article is offered for interstate transit. The amendment of the Senator from Colorado applies to the time when the traffic is received. The amendments do not cover the same thing. This amendment says, "when offered for interstate or foreign shipment." The amendment of the Senator goes only to the time when the shipment is received.

Mr. PHIPPS. That is correct.

Mr. DILL. So that the amendment of the Senator from Colorado would have the effect of doing away with inspection at the point of shipment, and requiring it only at the point of reception.

Mr. PHIPPS. If the proponent of the pending amendment is unwilling to accept this as a substitute, I shall withdraw it, and offer it later as a separate amendment.

The VICE PRESIDENT. The Senator withdraws his amendment. The question is on agreeing to the amendment proposed by the Senator from Wyoming.

Mr. KENDRICK. Mr. President, I want to state again that it will be recalled that when the bill was under discussion on Thursday, I think it was, I suggested the necessity, where commodities reached the market in damaged condition, of having an authorized agent, who was unbiased in his judgment, pass upon and determine the actual condition of the commodity. With that idea in mind it occurred to me that the Bureau of Markets, which will have the administration of the law, would exercise the best judgment as to the form of amendment required to provide such authority. With this thought in mind I have asked the advice of the bureau and the amendment as proposed is substantially as recommended by the bureau.

Mr. DILL. Mr. President, will the Senator yield?

Mr. KENDRICK. I yield.

Mr. DILL. If I understand the amendment of the Senator from Wyoming, it proposes to have these inspectors do their

work and grant their certificates both at the point of shipment and at the point of reception, while the amendment of the Senator from Colorado applies only to the point of reception.

Mr. KENDRICK. That is correct.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Wyoming [Mr. KENDRICK].

The amendment was agreed to.

Mr. PHIPPS. Mr. President, I reoffer the amendment which was reported before.

The VICE PRESIDENT. The amendment will be stated.

The LEGISLATIVE CLERK. On page 4, line 4, at the end of section 3, add a new paragraph, as follows:

Whenever upon the arrival of a shipment of agricultural produce in interstate or foreign commerce it appears that such produce is not in marketable condition, it shall be the duty of the consignee to notify promptly the inspector of agricultural products for the district and request an inspection of the same. If no such inspector has been appointed, the mayor of the town or city shall be notified. It shall also be the duty of the consignee to notify the shipper by telegraph that the shipment has arrived in bad condition.

Mr. PHIPPS. I think I have sufficiently explained the amendment.

The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from Colorado.

The amendment was agreed to.

Mr. BORAH. Mr. President, I want to recur to the amendment on page 9, which was adopted on Friday with reference to the service of summons, and ask the clerk to read it.

The VICE PRESIDENT. The clerk will read the amendment.

The LEGISLATIVE CLERK. On page 9, line 18, after the word "broker," insert the words "in which case service may be made on the defendant in any State of the United States."

Mr. BORAH. I ask unanimous consent for the reconsideration of the vote by which that amendment was agreed to.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the vote is reconsidered.

Mr. BORAH. I ask that that amendment be rejected.

The VICE PRESIDENT. The question is on agreeing to the amendment just stated.

The amendment was rejected.

Mr. HARRIS. Mr. President, I send to the desk a telegram from the commissioner of agriculture of my State, which I ask to have read.

The VICE PRESIDENT. The clerk will read.

The legislative clerk read the telegram, as follows:

ATLANTA, GA., *June 3, 1929.*

Senator WILLIAM J. HARRIS:

Borah bill in the Senate to suppress unfair and fraudulent practice in marketing perishable commodities will be great help to southern agriculture. Please support same if consistent with your views.

EUGENE TALMADGE,
Commissioner of Agriculture.

Mr. HARRIS. Mr. President, the fruit, vegetable, and melon growers of my State have been swindled out of millions of dollars by the commission merchants in New York, Chicago, and other large cities, because there was no such law on the statute books as this proposed by the Senator from Idaho [Mr. BORAH]. I know this measure will help the farmers of my State and adjoining States.

When a farmer ships his fruits, vegetables, melons, and other farm products to commission merchants in the cities, this law, if passed, will make them deal honestly or they will be punished and put out of business. The commission men make more profit, at times, in handling a carload of farm products in a day than the farmer makes profits, working all the year, in raising the crop. We must arrange to do away with the expensive middleman, so that the farmer may get more for his products, and the consumer will pay only a reasonable price.

This special session of Congress was called to give farm relief, and I believe that this should include everything that will help the farmers.

I have urged that this session should dispose of the Muscle Shoals development, which will do more to help the farmers of the Southeast than all the other things suggested. If the farmers could get cheaper fertilizer, they would be able to raise their crops at less expense, they could make more profit, and our section would be more prosperous. However, I regret that the Republican leaders are not willing that Muscle Shoals be considered at this session.

The next important matter for the farmers in my section is the export debenture plan, a part of the farm relief bill, which would practically guarantee every cotton producer 2 cents per pound as a bounty. Many Republican leaders oppose the export debenture plan granting a bounty for cotton, and I can not understand why they are willing to discriminate against the farmer. Under the Esch-Cummins bill the Government fixes a rate that practically guarantees dividends on all railroad properties. The Adamson Act was passed to help railroad employees. The high protective tariff gives the manufacturers of the United States several times as much profit as farmers would get under the 2-cent per pound bounty. The Post Office Department pays more than $100,000,000 per year for carrying mail than the Government receives for this service. Why should the farmers be the only ones that are not given some special assistance by the Government?

The farm relief bill without the debenture will give the farmers very little relief, and the tariff bill as passed by the Republicans in the House will tax the farmer several times as much as he derives from the farm relief bill unless we include the debenture giving the farmer 2 cents per pound on his cotton.

I regret very much that President Hoover opposed the debenture. One of the reasons he gave for opposing it was that it would raise the price of cotton and other products, thereby encouraging larger crops to be made. The object of this legislation should be to help the farmer get a better price for his products.

The high protective tariff will also encourage manufacturers to make more, and yet the President does not object to that.

The debenture plan giving the farmers 2 cents per pound on their cotton is the only thing that will help the southern farmers like the manufacturers are helped under the tariff.

Mr. President, the amendment I proposed to the farm bill, if enacted into law, will save the cotton farmers millions of dollars and will prevent what happened about two years ago when employees of the Agricultural Department, without authority of law, predicted that the price of cotton would be lower. That statement caused cotton farmers in one day to lose in value $60,000,000. Under my amendment an employee would be fined and sent to prison if he gave such a statement.

Mr. COPELAND. Mr. President, was the amendment proposing to relieve the small shippers of the necessity of taking out licenses agreed to?

Mr. BORAH. Yes.

Mr. BLEASE. Mr. President, I would like to have the information, if the Senator from Georgia [Mr. HARRIS] or the Senator from Virginia [Mr. SWANSON] has it, as to whether the commissioners of agriculture who sent the two telegrams which have been read at the desk sent them at the request of some one else, or if they are sufficiently familiar with the provisions of the bill to justify them in saying that it will be of great interest and benefit to southern agriculture.

Mr. HARRIS. Mr. President, the agricultural commissioner of my State is a man who has shown that he is interested in the farmers' needs. I am sure he would not have sent the message unless he felt sure it would help the farmers.

Mr. BLEASE. I am glad to hear that. I still hold to the opinion which I have heretofore expressed with reference to this farm-relief business. I think the bill now before us should have some provision in it to give truck growers relief along another line and that is relief in the matter of railroad and express rates.

I received a communication last Friday or Saturday from a newspaper asking my opinion in reference to another matter in connection with railroads. I have replied that that question so far as I was concerned did not apply to me, and that I thought each individual Senator should answer in his own way as to whether the question applied to him, but that I thought a more serious question was the appointing of Federal judges from amongst corporation lawyers only, the appointing of Federal judges from among lawyers who represent great corporate interests or who owned great corporate interests, thus placing them on the bench to pass upon questions or differences arising between the people and the corporations which they have sometime represented or in which they have stock.

I believe the bill now before us should include something with reference to a reduction of railroad and express rates, and that that would do more good and give more relief to the farmers of the country than the bill which passed the Senate some days ago having in it the debenture plan. I know in my State of cases of men who have shipped produce to brokers, and instead of receiving pay for their goods the produce has been thrown on the market and the man who shipped it received a bill saying that the returns from the sale of his produce lacked so much money of bringing enough to pay the actual charges, and therefore he would please remit the difference. Instead of receiving some pay for his product or whatever produce he might have shipped, he received a bill for the freight amounting to more than the articles shipped by him brought, as was claimed by the commis-

sion men. I believe that some amendment covering a case of that kind should be incorporated in the bill.

I have an article from the South Carolina Gazette, of Columbia, S. C., of May 29, 1929, reading as follows:

JOINT-STOCK LAND BANK FAILURES

Both the Milwaukee Joint Stock Land Bank and the Kansas City Joint Stock Land Bank are in the hands of receivers, and several others in the East and West are on the ragged edge. One member of the Kansas City institution criticizes the Federal Farm Loan Board for its failure to show more than a passing interest in the situation.

The Kansas City institution was the second largest in the country, next to Chicago. It closed May 4, 1927. When this bank closed it had $44,377,000 of farm loan bonds outstanding. H. M. Longworthy, the receiver, estimates the deficit at $6,498,000 more than the entire capital stock of the bank, so an assessment of 100 per cent has been levied against stockholders.

The Milwaukee bank is now in process of liquidation. It is doubtful if any reorganization will be undertaken.

More than 4,000 banks in the farming sections of the United States have been forced to close since the deflation of 1921. And more than 2,000,000 farmers have left the farms during the same period.

Yes, there still is a farm problem to solve.

Mr. President, in the Washington Post of Friday, May 31, 1929, there was an editorial about "traitors" in the Senate. I ask unanimous consent that the editorial may be printed in connection with my remarks.

The VICE PRESIDENT. Without objection, it is so ordered. The editorial is as follows:

[From the Washington Post, Friday, May 31, 1929]

ON THE RAGGED EDGE

If the Republicans of Congress will pay a little more attention to their party's pledges and a little less to premature vacation plans they will stand a better chance of reelection.

During the last six weeks Congress has practically destroyed public confidence in the Republican Party. The people still have full faith in President Hoover's good intentions, but the rosy anticipations of wonderful achievements under his leadership are fast disappearing, as it is now evident that the Republican Party in Congress contains traitors within its ranks who are determined to wreck the party and the Hoover administration. The combination of Democrats and Republican traitors in the Senate constitutes a majority that can bring to naught all the well-laid plans of the Republican President in behalf of farm relief, and a tariff revision that would commend itself to the country.

Unless this combination breaks or is broken, the debenture feature will remain in the farm relief bill or will appear in the tariff bill. President Hoover will be compelled to veto any bill in which it appears. Then good-by to farm relief or tariff revision, and good-by to public confidence in the Republican Party as manager of the Government.

The wave of public disgust over the situation in Congress is almost unprecedented. When Mr. Hoover was placed in command by the votes of nearly all the States the people expected Congress to support him in bringing about immediate farm relief and reasonable tariff revision. He is getting neither, and it is not his fault. The public knows that it is not his fault. Hence there is rising a storm of popular wrath against Congress, which is very likely to destroy good men as well as bad, as it strikes blindly at the frustraters of prosperity. Republicans who support the party pledges are in danger, as well as the traitors who have violated the pledges.

The world's oversupply of wheat is bringing another disaster to American farmers at the very moment when Congress is failing to provide farm relief. Agriculture distress is the forerunner of industrial depression and the general collapse of prosperity. Labor is involved. The Republicans of Congress are bereft of reason if they think they can escape retribution at the next election individually and as a party. If congressional elections were to be held to-day the House of Representatives would be made Democratic not because the people have gone Democratic but because they feel that they have been betrayed by the Republicans.

The suggestion that Congress should take a recess until fall, without enacting farm relief or tariff revision, is sheer madness. Both of these measures must be enacted, and they must be fairly satisfactory or the Republican Party may as well kiss good-by to its control of Congress. The danger is that the majority party will fail to enact satisfactory legislation either now or in the autumn. This failure would not merely break the hold of the Republican Party, it would imperil national prosperity. The people will not stand for this unnecessary and suicidal destruction of their prosperity by politicians who refuse to do teamwork in the public interest.

The Republicans in Congress—all of them, loyal and traitor—were never in greater danger than they are at present. A little more juggling with the public welfare, a little more dissension and party treachery, and the betrayed farmers, industrialists, and workers of the United States will do the rest.

Mr. BLEASE. On Saturday last the Washington Herald contained a cartoon with Mussolini Hoover out in the woods lost, and surrounding him were a lot of wolves, which were supposed to represent Republican Members of this body. Sitting up in the tops of some of the trees were some owls, which were supposed to represent some of the Democrats. Accompanying the cartoon was a brief editorial containing a threat and saying that the Senate and House should not take a recess until the farm bill had been passed with the debenture plan not in it.

I do not believe that the President of the United States would veto the farm relief bill if the debenture plan was left in it. I voted for the debenture plan, and I propose to stand flat-footed right there. I believe that the President, before he would allow the Congress to adjourn or take a recess before some attempt is made to deceive the farmer, should have his bluff called that he would not sign the bill with the debenture plan in it. I hope the Congress will stay here and that there will be no compromise in reference to that matter.

That is my individual opinion. I hope the Senate will stand firm; that the "traitors" on the other side of the Chamber, so pleasantly characterized by the Washington Post, and the "hoot owls" on this side of the Chamber, so characterized by the Washington Herald, will be men enough not to be frightened because Mussolini Hoover is lost in the woods with his gun. Call his bluff and let him veto his party's bill. He will not dare do it and let his extra session be a failure.

The VICE PRESIDENT. If there are no further amendments as in Committee of the Whole, the bill will be reported to the Senate.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The VICE PRESIDENT. The bill is in the Senate and open to amendment.

Mr. COPELAND. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Senator from New York suggests the absence of a quorum. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Allen	Glass	McNary	Stephens
Ashurst	Glenn	Metcalf	Swanson
Blease	Goff	Norbeck	Thomas, Idaho
Borah	Hale	Norris	Thomas, Okla.
Bratton	Harris	Nye	Townsend
Brookhart	Hastings	Oddie	Trammell
Broussard	Hatfield	Overman	Tyson
Burton	Hawes	Patterson	Vandenberg
Capper	Hayden	Phipps	Wagner
Connally	Heflin	Pine	Walcott
Copeland	Johnson	Pittman	Walsh, Mont.
Cutting	Jones	Ransdell	Warren
Dale	Kean	Reed	Waterman
Dill	Kendrick	Schall	Watson
Fess	La Follette	Sheppard	Wheeler
Fletcher	McKellar	Smith	
Frazier	McMaster	Steiwer	

Mr. FESS. The junior Senator from Maryland [Mr. GOLDSBOROUGH] is detained from the Senate on account of illness. I will let this announcement stand for the day.

Mr. WATSON. I desire to announce that the Senator from Utah [Mr. SMOOT], the Senator from California [Mr. SHORTRIDGE], the Senator from New Jersey [Mr. EDGE], the Senator from Michigan [Mr. COUZENS], the Senator from Vermont [Mr. GREENE], the Senator from New Hampshire [Mr. KEYES], the Senator from Kentucky [Mr. SACKETT], the Senator from North Carolina [Mr. SIMMONS], the Senator from Mississippi [Mr. HARRISON], and the Senator from Massachusetts [Mr. WALSH] are detained in the Finance Committee.

Mr. LA FOLLETTE. I desire to announce the unavoidable absence of my colleague the junior Senator from Wisconsin [Mr. BLAINE] and to state that he has a general pair with the junior Senator from Maine [Mr. GOULD]. I should like to have this announcement stand for the day.

Mr. WATSON. The junior Senator from Rhode Island [Mr. HEBERT] is absent on important business.

The VICE PRESIDENT. Sixty-six Senators having answered to their names, a quorum is present. The bill is in the Senate and open to amendment.

Mr. BORAH. Mr. President, before the vote shall be taken on the bill, I desire to say that the amendment which was adopted on Friday with reference to changing the jurisdiction of the court, and giving the right of service in States other than the one in which the defendant resides, has been stricken from the bill.

Mr. COPELAND. Mr. President, I wish it might be possible for the Senator in charge of the bill to give further consideration to the limitation of the licensing provision. As I have said—and I have no disposition to repeat it—it is very damag-

ing to producers of the commodities to deny them the privilege of the license, putting it in that way; and, in my judgment, it will drive the commission merchants of the city who are licensed to the purchase of products from licensed commission brokers in various localities. I, therefore, hope a way may be found by which that defect in the bill may be remedied. The bill as written, in my judgment, is now very much better for all concerned, and certainly better for those who are the sellers of perishable products and the producers of perishable products. May I venture to hope that this matter may be given some further consideration by the Senator from Idaho?

Mr. BORAH. Mr. President, I realize the importance of the amendment, and I shall give it further consideration, but I am not in a position at this time to consider any change in the language.

The VICE PRESIDENT. The bill is in the Senate and open to amendment. If there be no further amendment, the bill will be ordered to be engrossed and read a third time.

The bill was ordered to be engrossed for a third reading and was read the third time.

The VICE PRESIDENT. The question is on the passage of the bill.

The bill was passed.

NATIONAL-ORIGINS CLAUSE OF IMMIGRATION ACT

Mr. NYE. Mr. President, I move that the Senate proceed to the consideration of Order of Business No. 8, being Senate Resolution 37.

The VICE PRESIDENT. The Secretary will read the resolution.

The Chief Clerk read the resolution (S. Res. 37) submitted by Mr. NYE, April 23, 1929, as follows:

Resolved, That the Committee on Immigration be discharged from the further consideration of the bill (S. 151) to repeal the national-origins provisions of the immigration act of 1924.

Mr. SHEPPARD. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Allen	Frazier	McNary	Stephens
Ashurst	Glass	Metcalf	Swanson
Blease	Glenn	Norbeck	Thomas, Idaho
Borah	Hale	Norris	Thomas, Okla.
Bratton	Harris	Nye	Townsend
Brookhart	Hastings	Oddie	Trammell
Broussard	Hatfield	Overman	Tyson
Burton	Hawes	Patterson	Vandenberg
Capper	Hayden	Phipps	Wagner
Connally	Heflin	Pine	Walcott
Copeland	Johnson	Pittman	Walsh, Mont.
Couzens	Jones	Ransdell	Warren
Cutting	Kean	Reed	Waterman
Dale	Kendrick	Schall	Watson
Dill	La Follette	Sheppard	Wheeler
Fess	McKellar	Smith	
Fletcher	McMaster	Steiwer	

The VICE PRESIDENT. Sixty-six Senators have answered to their names. A quorum is present. The question is on the motion of the Senator from North Dakota that the Senate proceed to the consideration of Senate Resolution 37.

Mr. REED. Mr. President——

The VICE PRESIDENT. The Senator from Pennsylvania.

Mr. NYE. I yield.

Mr. REED. I have been recognized by the Chair?

The VICE PRESIDENT. The Senator from Pennsylvania is recognized.

Mr. NYE. Did I not have the floor, Mr. President?

The VICE PRESIDENT. The Senator simply made the motion, and the Senator from Pennsylvania was then recognized. Does the Senator from Pennsylvania yield to the Senator from North Dakota?

Mr. REED. If the Senator from North Dakota wishes to address the Senate on the subject of the motion, I will yield.

Mr. NYE. I do not so desire, Mr. President.

Mr. REED. Mr. President, the motion of the Senator from North Dakota is to proceed to the consideration of a resolution to discharge the Committee on Immigration from the further consideration of a repealer of the national-origins clause of the immigration act. I am inclined to think that it is to the best interest of all concerned that the resolution of discharge should come up and be discussed; and I do not believe that it is necessary to have a very prolonged debate about it; but among those Senators who are most interested in this subject is the senior Senator from Arkansas [Mr. ROBINSON]. I understand that his plans are that he will not return to the Senate before next Wednesday. I should not want to see a vote upon the resolution until the Senator from Arkansas has had a chance to return and express himself on the subject. He talked to me about it before he went away, and I know how great his interest is. However, if we may have an informal understanding to that effect, that there shall not be a vote on the resolution until then, I shall not be inclined to oppose the pending motion, but, on the contrary, think I shall vote for it.

Mr. NYE. Mr. President, will the Senator yield?

Mr. REED. I yield to the Senator from North Dakota.

Mr. NYE. The Senator refers to next Wednesday. Does he mean that the Senator from Arkansas is expected to be back in the Senate on Wednesday of this week?

Mr. REED. I am told he will be back here day after to-morrow, and I would not want to have a vote taken on the motion to discharge the Immigration Committee until the day after to-morrow.

Mr. NYE. Mr. President, having knowledge of the number of Senators who wish to be heard upon this subject, I can not foresee a chance for a vote before Wednesday of this week.

Mr. REED. Nor can I, but I did not want to let the pending motion be acted upon without referring to the situation, and I should feel quite free to ask the Senate to postpone a vote on the resolution until the day after to-morrow in any event.

Mr. NYE. I think, Mr. President, I shall agree to that.

The VICE PRESIDENT. The question is on the motion of the Senator from North Dakota that the Senate proceed to the consideration of Senate Resolution 37.

The motion was agreed to and the Senate proceeded to consider the resolution.

The VICE PRESIDENT. The question is on agreeing to the resolution.

Mr. NYE obtained the floor.

Mr. SWANSON. Mr. President, I understand the resolution is now the unfinished business.

The VICE PRESIDENT. The resolution is the unfinished business, and the question is on agreeing to the resolution discharging the Committee on Immigration from further consideration of Senate bill 151.

Mr. REED. The resolution to discharge the committee is surely debatable, is it not?

The VICE PRESIDENT. It is.

Mr. REED. A parliamentary inquiry. Has not the Senator from North Dakota [Mr. NYE] asked to be recognized on the subject?

Mr. NYE. I have.

Mr. SWANSON. I should like to have an understanding, Mr. President.

The VICE PRESIDENT. Does the Senator from North Dakota yield to the Senator from Virginia?

Mr. NYE. I yield.

Mr. SWANSON. I understood that an understanding was arrived at between the senior Senator from Pennsylvania [Mr. REED] and the Senator who has charge of this resolution that no vote would be taken on the disposition of this measure until next Wednesday.

Mr. REED. That is correct.

Mr. SWANSON. With that understanding, everybody consented to have the resolution made the unfinished business. I think it is the duty of the Chair to enforce the understandings arrived at in the Senate. Consequently, it seems to me that the Chair, with that unanimous agreement and understanding, will see that no vote is taken until the time agreed upon.

Mr. REED. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from North Dakota yield to the Senator from Pennsylvania?

Mr. NYE. I yield.

Mr. REED. If I correctly have understood the Chair, the Chair merely stated the question as a preliminary to the debate which was expected to follow. The question is, Shall the resolution to discharge the committee be agreed to?

The VICE PRESIDENT. That is the pending question.

Mr. NYE. Mr. President, in proposing to repeal the national-origins clause of the immigration act I approach the subject with some misgivings as to my own ability to present it clearly and concisely, and in a manner that will be certainly understood, without the presence here of the one Member of this body who has made himself so close a student of the question of national origins. I have reference to the senior Senator from Minnesota [Mr. SHIPSTEAD], who has been absent from the Senate for some weeks owing to a serious illness on his own part. So, as I say, I approach the task with some misgivings; and yet so deep is my conviction that national origins as a basis of immigration quotas is unfair and inaccurate that I have no hesitancy in devoting myself to this cause as best I can.

However, in presenting this argument I think, in all fairness, I should, first of all, present the argument in some manner as it would be presented were the Senator from Minnesota present.

In the hearings conducted by the Senate Committee on Immigration last February, though he was not able to be present at the committee hearings, the Senator from Minnesota did submit a statement which was incorporated in and made a part of the record of those hearings; and I desire to read his statement incorporated in the record at that time:

STATEMENT OF HENRIK SHIPSTEAD BEFORE THE SENATE COMMITTEE ON IMMIGRATION REGARDING THE NYE RESOLUTION TO POSTPONE EFFECTUATION OF NATIONAL-ORIGINS CLAUSE

On two previous occasions the Committee on Immigration has been called upon to examine the report of the three Cabinet officials based upon their investigations through statistical reports. On both occasions your committee has refused to accept the report. The reasons given to the Senate for refusing to accept the report are contained in the following statement by the chairman of the Committee on Immigration February 1, 1927:

"I desire to say that under the present immigration law the President is required to promulgate a proclamation on the 1st day of April, 1927, in respect to the national-origins provisions of the law.

"Upon this subject two messages have been received by the Senate. The last of those messages states that figures relied upon for the quota numbers of various countries are ambiguous and that practical legislation could not be predicated upon them."

And further he says:

"I violate no confidence, I think, in saying to the Senator from Missouri that the majority of the Immigration Committee desired to repeal the national origins law, but there being a minority in favor of it and our time being so limited, we felt that we could not at this time have definite action.

"The resolution passed the Senate, came before the Immigration Committee of the House, and a majority of the committee reporting the resolution to the House reported in part, as follows:

"'The committee having considered the text of Senate Joint Resolution 152, to postpone for one year the going into effect of the national-origins provision of the immigration act of 1924, is of the opinion that at the end of one year from July 1, 1927, the same uncertainty as to the results of regulating immigration by means of the national-origins plan will continue to exist.

"'That the Secretaries of State, Commerce, and Labor will have little, if any, more positive evidence on which to base quota findings than at present.

"'That too much uncertainty exists as to the requirements of the law that "the President shall issue a proclamation on or before April 1, 1927," when read in conjunction with further provisions of the law.

"'That it seems far better to have immigration quotas for the purposes of restriction fixed in such a manner as to be easily explained and easily understood by all.

"'That the committee is of the opinion that the United States, having started on a policy of numerical restriction, the principle of which is well understood, that little will be gained by changing the method.'"

I take for granted that your committee has again refused to accept the report of the fact-finding commission appointed by the President according to law. I base that upon the fact that the committee has decided to hold public hearings.

LAW OF 1924 SPECIFIC

Under the provisions of the immigration law of 1924 the commission composed of the Secretaries of State, Labor, and Commerce had the task of determining the national origin of the population of the United States. This specific instruction of the law to this commission reads as follows:

"Such determination shall not be made by tracing the ancestors of descendants of particular individuals, but shall be based upon statistics of immigration and emigration, together with rates of increase of population as shown by successive decennial United States censuses, and such other data as may be found to be reliable."

You will note that the mandate is quite specific in its limitations upon the commission. The purpose of this provision of the law was to create a fact-finding commission. The commission is instructed by law to confine their source of information to "immigration and emigration" statistics "together with rates of increase of population as shown by successive decennial United States census, and such other data as may be found to be reliable."

The law specifies these three sources of information upon which to find the facts. The report is here; in fact, it is here for the third time by request of the committee for the purpose of determination by your committee as to whether or not the commission has complied with the provisions of the law in its search for facts and if the facts reported are of such a character that the committee in its judgment feels they are sufficient and substantial enough to form the foundation of the immigration policy of the United States.

It must be clear to everyone that the limitations conferred by law upon the fact-finding commission extend also to the Committee of Immigration in this case. The committee sits in a judicial capacity in judgment on the report and the report of the commission must form the foundation of your decision. Under the law it seems plain that the committee is confined to the report of the commission. It, therefore, becomes important to learn what is the foundation of the commission's report.

Therefore I call the committee's attention to the testimony of the chairman of the commission's "experts" whose duty it is to report to the commission of three Cabinet officials in order that we may learn upon what their report is founded.

CENSUS OF 1790 BASIS OF REPORT

On page 14 of Senate document dated March 15, 1928, and designated as Hearings Before the Committee on Immigration, United States Senate, Seventieth Congress, first session, we read the following:

"Senator SHIPSTEAD. Doctor, upon reading the report I got the idea that the census of 1790 plays a very important part in your report.

"Doctor HILL. Yes; that is true.

"Senator SHIPSTEAD. It is almost a foundation for the entire report, as I read it.

"Doctor HILL. Well, you are talking now about the census records, not about the century of population growth?

"Senator SHIPSTEAD. I am talking about the census record, and the century of population growth is based, as I understand it, upon the census of 1790?

"Doctor HILL. Yes.

"Senator SHIPSTEAD. So the census of 1790 becomes the key to the arch of the whole basis of calculation as I understand the report. I wanted to know if that is your idea?

"Doctor HILL. Yes; for that part of the population which we call the original native stock, representing about 45 per cent of the total.

"Senator SHIPSTEAD. Can you tell us how many or what percentage of the statistics gathered in that report were destroyed when the British burned the Capitol here?

"Doctor HILL. Well, the records for New Jersey, Delaware, Georgia, Kentucky, and Tennessee. These records have been lost, but it is not altogether certain that they were destroyed when the British burned the Capitol, although that is the tradition.

"Senator SHIPSTEAD. It was given at one time as something like six or seven States of which the statistics were burned at that time, so given by one of the Commissioners of Immigration.

"Senator COPELAND. Does the Senator mean that the records relating to those States were burned?

"Senator SHIPSTEAD. Yes."

In Senate document dated December 22, 1926, and designated Hearings before the Committee on Immigration, United States Senate, Sixty-ninth Congress, second session, on page 4, while making a statement on the provisions of the law specifying the source of information upon which the commission was instructed to base its conclusion I made the following statement:

"The number of inhabitants in continental United States in 1920 whose origin by birth or ancestry is attributable to such geographical area. Such determination shall not be made by tracing the ancestors or descendants of particular individuals, but shall be based upon statistics of immigration and emigration, together with rates of increase of population as shown by successive decennial United States censuses, and such other data as may be found to be reliable."

It will be seen from the above that the most important element in this determination is "statistics of immigration and emigration." The next important element is "rates of increase of population as shown by successive decennial United States censuses."

As reliable statistics of immigration and emigration are not in existence the whole plan fails and leaves the determination to mere guesswork or conjecture.

"Senator REED. In the absence of statistics, you say?

"Senator SHIPSTEAD. Yes. I say 'reliable statistics' are not available. According to the best authorities, there are no reliable statistics of immigration for the first 213 years of this country's history. I believe you stated in the debate upon this proposition that there were none until 1820?

"Senator REED. Yes.

"Senator SHIPSTEAD. I am quoting from your statement on the floor of the Senate, April 3, 1924, page 5460, part 6, volume 65, of the CONGRESSIONAL RECORD: 'There was no official governmental record of immigration commenced until the year 1820.'"

Dr. Edward McSweeney, former Assistant Commissioner of Immigration, has made a statement on that, and if you would care to have me do so I would like to read it. He said [reading]:

"In 1819 a law was passed making it necessary for the captains of all incoming ships bringing passengers to the United States to file a manifest of the passengers but, except to give the number of the passengers to the Government, was never other than perfunctory and almost never used. These accumulated manifests were burned in the Ellis Island fire of 1896. The first real attempt to gather immigration statistics was after the Immigration Bureau was established in the early nineties."

In 1906 Congress passed a law providing that the Director of the Census be authorized and directed to publish in permanent form, by counties and minor subdivisions, the names of the families returned at the first census of the United States in 1790.

Speaking of the difficulties in this work, William S. Rossiter, then chief clerk of the Census Bureau, stated in Outlook for December 29, 1906, page 1071, marshals in the different districts who had charge of the census:

"The break in official records is one of the marks of the teeth of the British lion, these papers and many others having been destroyed during the occupation of Washington in the War of 1812."

Mr. Rossiter also states:

"Vagaries of size, shape, paper, ruling, chirography, and language could easily be forgiven, if, however, thereby we could restore the missing schedules for Delaware, Georgia, Kentucky, New Jersey, Tennessee, and Virginia, another reminder of the British, for they were also destroyed during the occupation of Washington."

Mr. Rossiter estimates that one-fourth of the enumeration is now lacking and that it would be very difficult to comply with the law of 1906.

Director of the Census North was not seemingly deterred by the fact that such a large part of the records was missing, and proceeded in 1909 to make a voluminous report which not only used the partial records but gave meticulous percentages of the racial divisions in the country based solely on names, the same as the late Senator Lodge has done in his Distribution of Ability in 1896. Well, certainly the recklessness of that would be apparent; for instance, here is a man by the name of Murphy; suppose he marries a girl of German descent. What would the children be? If you go by name, of course, they would be called Irish; the German would be wiped out. If an Irish girl should marry a man with a German name, a Scotch name, or Scandinavian name, the Irish descent would be wiped out.

These fragmentary statistics of immigration and emigration are, therefore, admitted by the chairman of "experts" to be the foundation of their report. One-half of the records of the census of 1790 were destroyed more than 100 years before the commission began its work. In the census of 1790 the only information gathered by the census takers was the name and age of the individual. No information was gathered to determine their national origin. The only manner in which the national origin could be determined of the population of 1790 would be from the remaining records of the seven remaining States. Six are gone, and the only manner in which the national origin if the remainder can be determined is by tracing the national origin of each individual of the population at that time by spelling or sound of his name. This is "tracing the ancestors of descendants of particular individuals," but the law creating the committee of experts says, "such determination shall not be made by tracing the ancestors or descendants of particular individuals, but shall be based upon statistics of emigration and immigration together with rates of increase of population as shown by successive decennial United States censuses, and such other data as may be found to be reliable."

It seems plain and must be patent to the committee that the census of 1790 is specifically eliminated from consideration in this work by specific provision of the law. It is plain, in view of the statement of Doctor Hill that the census of 1790 is the foundation of his report that this evidence places the report in an indefensible position. There remains then (a) "Statistics of immigration and emigration."

RECORDS FROM 1819 TO 1896 BURNED

On April 4, 1924, page 5460, part 6, volume 65 of the CONGRESSIONAL RECORD, I find the statement made by the Senator from Pennsylvania [Mr. REED]: "There was no official governmental record of immigration commenced until the year 1820." The immigration statistics provided for by law in the year 1819 were burned in the Ellis Island fire of 1896. As to the reliability of these records, Dr. Edward McSweeney, former Commissioner of Immigration, said:

"In 1819 a law was passed making it necessary for the captains of all incoming ships, bringing passengers to the United States, to file a manifest of the passengers but except to give the number of passengers to the Government was never other than perfunctory and almost never used. These accumulated manifests were burned in the Ellis Island fire of 1896. The first real attempt to gather immigration statistics was after the Immigration Bureau was established in the early nineties."

Therefore the immigration statistics up until the early nineties were "perfunctory and almost never used," and what there was of them were destroyed by the Ellis Island fire in 1896. The immigration statistics are therefore eliminated not only by the provisions of the law on account of unreliability but also by the fire.

There remains, then, for the consideration of the committee, "the rates of increase of population as shown by successive decennial United States censuses and such other data as may be found to be reliable." It is hard to understand what effect "the rate of increase of population as shown by successive decennial United States censuses" can have upon the determination of the national origin of the American population so long as no information bearing upon national origin of the American population was gathered by the Census Bureau until 1850 and the Census Bureau did not gather any statistics on the origin of parents that were complete until 1890.

NO NATIONAL ORIGIN CENSUS RECORD UNTIL 1890

I desire to call the committee's attention to Doctor Hill's testimony in Senate document designated as Hearing Before the Committee on Immigration, United States Senate, Seventieth Congress, first session, March 15, on page 19:

"Senator SHIPSTEAD. Doctor, have we got the returns for 1800?

"Doctor HILL. Have we got them?

"Senator SHIPSTEAD. Yes.

"Doctor HILL. There are some States missing still. States for which the 1800 census records are missing include Georgia, Kentucky, Mississippi, New Jersey, Tennessee, and Virginia, and certain limited areas in some other States; also Indiana Territory and Northwest Territory.

"Senator SHIPSTEAD. There were six or seven missing out of 1790.

"Senator WILLIS. I was wondering whether or not that might not be a check worth while. Our committees made these computations on the basis of the census of 1790. Suppose they should start an entirely independent inquiry, taking the census of 1800 and 1810 and see where they come out. It would be a pretty useful check, would it?

"Senator COPELAND. Up as far as 1830 it would be, Doctor Hill. That would be a very large undertaking, a very large task, especially as we would have to work with manuscript records. We haven't printed these schedules as we have those of 1790.

"Senator WILLIS. You say you have not any printed record for the census for the earlier periods?

"Doctor HILL. I mean by that, the original records. Of course, we have census reports giving statistics.

"Senator WILLIS. 1790 was printed; 1800 was not or 1810?

"Doctor HILL. No; nor has any later census been printed.

"Senator SHIPSTEAD. Can you tell me the first census we took in which we undertook to find out what country these people came from?

"Doctor HILL. 1850.

"Senator SHIPSTEAD. There was nothing done up until that time by our enumerators to determine where these people came from in Europe?

"Doctor HILL. That is true.

"Senator COPELAND. In 1850 did they go back further than the immediate parents?

"Doctor HILL. It did not go back as far as that; simply their own birthplace, whether foreign born, and in what countries.

"Senator COPELAND. When did they begin to ask anything about the parents?

"Doctor HILL. They made a beginning in 1880, but, as I stated a while ago, that was not a complete classification. The first complete classification made of parents was in 1890.

"Senator SHIPSTEAD. Then, until 1850 there was nothing to show except by assuming from the names?

"Doctor HILL. Well, we have the figures, you know.

"Senator SHIPSTEAD. Were there any other immigration figures other than those required by the Government to be filed by the officers of incoming ships with the immigration officers, the number of passengers, and that the passengers landed were accredited to the flag carried by the ship?

"Doctor HILL. I think you are right about that. I am not familiar with the immigration regulations of those days.

"Senator SHIPSTEAD. So, if the ship came in carrying passengers from all over Europe, assume she had 1,000 passengers, the officer would file with the immigration department a manifest showing that 1,000 came here in that German ship and immigration officials would accredit those immigrants to Germany; is that right?

"Senator REED. I doubt whether there was any ship of that capacity at that time.

"Senator SHIPSTEAD. Of course, the figures I assumed merely for the purpose of illustration. For instance, an English ship coming in under the English flag, carrying passengers from all over Europe, the passengers would be accredited to England?

"Senator WILLIS. The way they handled ships in those days that would not be a bad guess, because they did not have tramp vessels gathering up cargo. A ship was laden and went to a certain port.

"Senator REED. Your conclusions upon that were checked, were they not, by statistics of emigrants from various countries?

"Doctor HILL. So far as we could get them."

In Doctor Hill's last report he says:

"In order to utilize the available data to best advantage in the determination of national origin it was necessary first of all to determine what proportion of the white population of the United States in 1920 was derived from the white population present in the United States when the first census was taken in 1790."

Suppose that it were possible to determine what percentage of the population of 1920 was descended from the population prior to 1790, what bearing could that have on the national origins of the population of 1920 unless we had some definite immigration and census records

informing us on what was the national origins of the population prior to 1790?

On page 2 of Doctor Hill's last report we learn—

"The national origin of the original native or colonial stock is assumed to be the same as that of the 1790 population. In its preliminary report, submitted in 1926, the quota committee accepted the classification of 1790 population by nationalities as given in A Century of Population Growth, a work published by the Bureau of the Census in 1909. It was admitted, however, that there was a 'considerable element of uncertainty' in a classification based as that was upon the names of heads of families."

On page 4 of the last report and the one now pending we find that one of the experts explains the method of determining the national origins of the population of 1790. This shows plainly that the committee of experts' report is based on A Century of Population Growth, which again is based on the census of 1790, and the only excuse for basing the quotas on the census of 1790 and the only scientific thing about it is that they determine the national origin of the population of 1790 by tracing or by guessing the national origin of the individual, using his name as a basis. This method was considered so unscientific at the time of the passage of the immigration act that the Congress specifically prohibited this method from being used.

Therefore up until 1890 we find there was no complete classification made of the national origins of the parents of the American population by the Census Bureau. This is an admission of Doctor Hill in the hearings conducted by your committee. It seems to me, therefore, that the record, as well as the law, rules out the "Rate of increase as shown by successive decennial United States censuses."

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There remain, then, "such other data as may be found to be reliable." What that data is and how reliable it may be is for the committee to determine. In passing upon the reliability of whatever remaining data there may be, I am sure it is not necessary to warn the committee against going astray on testimony presented by people whose mental complex seems biased by international and racial prejudices and inhibitions always latent to some extent in the human breast. The law does not provide that the committee shall consult the opinions and prejudices of our various racial or national groups. The law specifically provides that the commission of Cabinet officers shall search the records for facts. The law does not provide the commission shall search emotions for prejudices. It is plain that the same provisions of law apply to the committee. The Congress of the United States legislates under the provisions of the Constitution. It is not within the province of Congress to legislate for or against any person or group representing any nationality composing its citizenship. We legislate as Americans. The Constitution does not distinguish between racial groups.

I find on reading the report of the committee of experts that they have arbitrarily divided the American population into two classes, the native American stock and the immigrant stock. The native American stock is held by the committee of experts to be composed of those whose ancestors were here before 1790, and that part of our population whose ancestors came here after 1790 are designated as immigrants and the children of immigrants. This arbitrary classification is the foundation of the report of the committee. I would like to know how this committee of "experts" discovered that the population of the United States prior to 1790 were not immigrants or children of immigrants. That is a new theory that I nominate to stand on par with Doctor Einstein's fourth and fifth dimensions, interesting for speculative purposes, but surely not to be relied on to form the foundation of an American immigration policy. I know of no provision of law, nor do I desire any such, that may prohibit those whose ancestors were here before 1790 from purchasing for themselves championship belts for the purpose of designating to the world that they are the only "simon-pure" Americans. But for purposes of legislation we can not distinguish or give any preferred status to any particular group.

The law specifically confers the duties of finding the facts upon a commission of three Cabinet officers. This commission has made its report. It is evident that the report of the Cabinet officers based upon the work of their "experts" satisfy the committee that the data is not of such a character that it was sufficient to comply with the provisions of section (c) of the immigration act. I, therefore, assume that the present hearings have been extended by the committee to other sources, in the hope that it may find "such other data as may be found to be reliable." How scientific and how reliable such testimony may have been as presented to the committee by the various witnesses appearing before it is for the committee to determine. It must be evident and apparent to the committee that the sources enumerated in the law have been searched and found wanting.

It is therefore plain that the committee, having discarded the report of the commission appointed by law, and if the national-origins clause is to be put into effect and used as a basis for our immigration policy it can only be done by amending the immigration act of 1924. If that is the intention of the committee I assume its recommendations will be based upon information obtained in public hearings, and will be political in character since the scientific and statistical data to which we are limited under the law is not found to be reliable.

Mr. President, I have previously said that I believe the underlying principle of the national-origins theory was good and was deserving of confidence. The purpose of the national-origins theory is that of preserving our racial balance by admitting, as nearly as we can, a counterpart in miniature of our present population as immigrants each year. I think it altogether deserving as a theory, but before we can agree that this particular basis, under the so-called national-origins clause, is reliable, I think it well for us to ascertain as accurately as we can how fairly the conclusion has been reached that the quotas under national origins are fair and are reasonable.

Mr. DILL. Mr. President——

The PRESIDING OFFICER (Mr. STEIWER in the chair). Does the Senator from North Dakota yield to the Senator from Washington?

Mr. NYE. I yield.

Mr. DILL. I want to know on what theory the Senator agrees that our present composition of population is so ideal that it should not be changed.

Mr. NYE. I was not arguing that at all.

Mr. DILL. But the Senator admitted it.

Mr. NYE. I am admitting this: That the matter of immigration is so perplexing a question, and in many cases so embarrassing a question, that it is altogether desirable that we arrive at a basis to which we can point as being one that is fair and not discriminating against any people. To that extent I think the theory and the purpose of the national-origins theory is good.

Mr. DILL. Will the Senator yield again, Mr. President?

Mr. NYE. I yield.

Mr. DILL. The Senator recognizes that until recently there was absolutely no limitation on the numbers of immigrants who could come from any one country, and simply because an unusually large number from a certain country got into the United States is no reason, in my judgment, for allowing that particular class of immigrants to come here in exceedingly large numbers in the future. I have never been able to see the soundness of the proposal that because a lot of foreigners of one nation got into the United States we must forever allow that proportion of them to continue to come into the United States.

Mr. NYE. I think the Senator's point is well taken.

Mr. HARRIS. Mr. President, I would like to know how the Senator from Washington would select immigrants coming into the country?

Mr. DILL. If the Senator from North Dakota will yield——

Mr. NYE. I yield.

Mr. DILL. When it comes to the selection of immigrants, I would select those who amalgamate best with our people, and who have proved, during their years in this country, that they made our best citizens. But I am not here to propose a plan that is ideal. I was challenging the admission made by the Senator from North Dakota that it was a sound basis to say that because a lot of people of one country or another had gotten into the United States, we ought to continue to allow that proportion to continue to come in.

Mr. NYE. Mr. President, in 1924, when the present immigration act was drawn and enacted into law, there were two plans incorporated, one of a temporary nature, the other intended to be of a permanent nature. It was deemed at that time advisable to follow such a theory as had been incorporated in the national-origins clause, to seek to base immigration quotas upon the percentage of the population represented in this country by the various countries of Europe at a given time. But it was very apparent that before any basis of quotas could be worked out on that theory, before the facts could be ascertained and the quotas fixed, a number of years would intervene.

Then for the period between then and the time when the national-origins clause should become effective it was provided that the basis of immigration should be 2 per cent of the total population of the foreign born in the United States in the year 1890. It was known that the 2 per cent would bring into the country annually about 150,000 immigrants, or the same as would be admitted under the national-origins plan when it became effective.

Mr. LA FOLLETTE. Mr. President, will the Senator yield?

Mr. NYE. I yield.

Mr. LA FOLLETTE. I am very much interested in the statement the Senator is making, because in a great many of the arguments which I have seen advanced for the adoption of the national-origins theory the impression has been given that it means a further restriction of immigration. I was much interested in the Senator's statement to the effect that, so far as

the restriction of immigration is concerned, the two plans are not very different in effect.

Mr. NYE. Not materially different at all; and if I could have my way about it, and have an opportunity to demonstrate my belief in restricted immigration, I should offer an amendment to the bill as to which we are attempting to discharge the committee from further consideration—an amendment which would provide a shaving down of the present basis of quotas to a point that would be nearer to 150,000 than it now is; in other words, to a point that would be similar to that point which would prevail under a basis of quotas builded under the national-origins plan, namely, about 153,000 or 154,000, according to the last estimates submitted by the experts who have been studying this problem.

Mr. HARRIS. Mr. President, would the Senator be willing to vote for an amendment making it 1 per cent instead of 2?

Mr. NYE. On what basis?

Mr. HARRIS. Whatever basis Congress might decide upon.

Mr. NYE. At this stage I do not believe I would, for this reason, that we have been admitting something like 150,000 or 160,000 immigrants each year for the last five years, and parts of families have come to this country and have made their plans for the bringing of the rest of the families in the following years as fast as the rest of the families could get on to the quota lists of their countries, and hundreds and thousands of people have been looking forward to that time. While I think eventually we will come to a further restriction of immigration than we are enjoying now, I do not think now is the time to propose any such drastic cut as would be brought about by a cut to 1 per cent from 2 per cent of the total foreign-born population found in the United States in 1890.

Mr. NORBECK. Mr. President, will the Senator yield?

Mr. NYE. I yield.

Mr. NORBECK. If I understand the Senator correctly, he proposes to offer an amendment when the bill comes into the Senate that will bring down the quota to where it would be under the national-origins plan.

Mr. NYE. I do, Mr. President.

Mr. NORBECK. The opening or closing of the quotas is not involved in this question?

Mr. NYE. It is not involved in this controversy at all. Some say that the difference between the national-origins basis and the 1890 foreign-born basis is not material, and the number of men and the kind of people who are professing to-day a belief that there would not be any material change in the basis of quotas under the two plans is surprising.

For that reason I must insist at this point on calling attention to how many these countries of Europe which are on the quota basis, and which are sending to us a given number under the 1890 basis, would be permitted to send under the national-origins basis, that there may be a clear demonstration of what a very radical, what a very material change will take place if we adopt the national-origins plan; not a material change in the total number who are coming into our country, but a very drastic change in the numbers which can come from the individual countries.

There is the case of Austria, which under the 1890 basis is sending us each year 785 immigrants. Under the national-origins basis, and according to the latest estimates submitted by the experts, they would be permitted to send 1,413.

In the case of Belgium, under the 1890 basis they are sending us 512 immigrants a year. Under the national-origins basis they would send us 1,304.

Denmark is sending us now 2,789 immigrants. Under the national-origins plan they would be permitted to send us only 1,181.

Finland is now sending us 471; under the national-origins plan they would send us 569. France is now sending us under the 1890 basis 3,954, and under the national-origins basis they would be cut to 3,086. Germany sends us now 51,227 and would be cut to 25,957, and this cut without a material reduction in the total number of immigrants who would be permitted under the plan. Great Britain and North Ireland are sending us at the present time a total number of immigrants each year of 34,007. Under the national-origins basis they would send us 65,721. Would anyone say this was not a material change over the old quota basis?

Greece is sending us at the present time 100 immigrants a year. Under the national-origins plan that would be increased by 300 per cent or more to 307. Hungary is sending now 473. Under national origins they would be privileged to send 869. The Irish Free State is sending us now 28,567. Under the national-origins plan the Irish Free State would send us 17,853.

Mr. REED. Mr. President, will the Senator permit an interruption?

Mr. NYE. Certainly.

Mr. REED. I think the Senator misspoke himself when he said the Irish Free State is sending us 28,567. That is merely the present quota.

Mr. NYE. That is what they are entitled to under the present quota, and that would also be true in the case of Great Britain.

Mr. REED. And Germany.

Mr. NYE. If I misspoke myself and said that Great Britain is now sending us 34,000, I should have said they were entitled to send 34,000.

Mr. REED. And the same is true of Germany.

Mr. NYE. Not nearly to the degree that it is of the others.

Mr. REED. I have the figures.

Mr. NYE. Italy is entitled to send us under the present basis 3,845, and under the national-origins basis would increase that number to 5,802. The Netherlands send us 1,648 now, and would be entitled to send 3,153. Norway, now privileged to send 6,453, under the national-origins basis would be entitled to only 2,377. I think these are indeed material changes over the basis which is now in effect.

Poland is privileged to send now 5,982; under the national-origins plan they could send 6,524. Russia can send now 2,248 annually; under the national origins they can increase that number to 2,784. Sweden is now permitted to send us 9,561; under the national origins her quota would be cut to 3,314. Switzerland is now permitted to send 2,081; under the national origins they could send only 1,707. So it goes through the list showing very material, very radical changes in the quotas which will be admitted from each country under the two plans.

I submit that the figures which I have recited do constitute a most radical change, so radical a change that it is going to prove increasingly difficult to convince interested parties that the national-origins plan and basis is a fair plan, a fair basis. I submit, too, that it is so great a change that it can not be brought about without convincing the people that it is a thing not in the best interests of our country; in other words, that we make under national origins a very great change without improving the nature of our immigration, if I may put it that way.

Commissioner Hull, in charge of immigration activities of the United States, has said at one time that he dreaded the thought of the new basis going into effect, the theory being that here for a matter of five years we have been operating under the 1890 basis, which has come to be quite generally accepted in all parts of the world and is not causing any great consternation or embarrassment on the part of our country or any other country. It is quite satisfactory; it is quite acceptable. Then, why should we resort to the adoption of another plan that we would have to explain at great length to convince the people, if it was at all possible to convince them, that there was fairness and reasonableness in the national-origins basis of quotas?

Any basis of immigration quotas to instill confidence and invite confidence, to be any success at all, must first be accepted as fair, must be accepted as being reasonably accurate, must be accepted as being practicable, and must above all things else be understandable to people who are giving any thought at all to immigration questions.

Perhaps it can be shown to the satisfaction of the Senate that the national-origins basis is fair, is reasonably accurate, is understandable, and is practicable, but I frankly confess that my mind has not yet been able to grasp the fairness and accuracy and understanding of the thing which some Members of this body seem to profess.

The national-origins basis, according to my mind, is inaccurate, is unfair, is not practicable, and is not understandable. That being the case, it is not inviting the confidence that any basis of immigration quotas ought to have to be accepted and to be a success. Why should we upset the present status and basis of immigration quotas which is so generally accepted when, to substitute in place of that, we must accept something which is provoking this endless debate and great discontent? The Assistant Secretary of Labor, Mr. White, testified before the committee that the quotas allotted at the present time, namely, on the 1890 basis, are quite generally accepted and agreeable, and that being the case, as long as there is serious controversy with relation to the merits of the national-origins plan, certainly I think there ought to be a unanimous agreement on the part of the Senate at least to further postpone the taking effect of the national-origins clause. It appears that after these three or four years of movement looking to a postponement we ought at last to have come to the point when we could intelligently say whether or not we are going to accept the national-origins basis.

It has been claimed that when the 1924 immigration act became a law it was thoroughly debated in Congress and that Members had a thorough understanding as to what national origins was. I do not see the chairman of the Senate Committee

on Immigration present in the Chamber at the moment, but were he here, I am satisfied that he would gladly lend his testimony as to the extent of the consideration that was given by the Senate to the national-origins question.

Frankly, there is an endless number of Senators in the Chamber now who were here in 1924, who heard then nothing about the matter of national origins and knew nothing about it. There was brought into the Senate at that time the bill providing for a temporary and for a permanent basis. They knew the so-called permanent basis was not to become effective for a matter of two or three years. They did not waste any time or thought concerning just what national origins was. They knew quotas were going to be fixed under the 1890 basis, and the result on that basis was quite acceptable and quite agreeable to the great majority of the Members of this body at that time. But they gave no thought and no heed to what national origins really meant. The Senator from Pennsylvania [Mr. REED] only a few days ago declared here on the floor of the Senate that at the time of the passage of the immigration act of 1924 the eminent Senator from Massachusetts, Mr. Lodge, came to him and congratulated him upon the passage of this all-important legislation, but he did not say then whether Senator Lodge had reference to the 1890 basis or the national-origins basis. It may be the Senator from Pennsylvania will explain just what Senator Lodge meant at that time, but as a general rule Senators did not in 1924 or 1925, or even in 1926, have any reasonable knowledge of what national origins was all about.

Mr. NORBECK. Mr. President, will the Senator yield?

Mr. NYE. Certainly.

Mr. NORBECK. I want to bear testimony to the statement that when the law was enacted it was looked upon as a restriction of immigration and with the hope and belief that if it should prove that it would not work out as good as expected, amendments would be made from time to time. Certainly there was no intention on the part of the Senate to say to the Scandinavian and German sections that they should be reduced to any such number as is working out under the national-origins plan.

Mr. NYE. It was never dreamed of.

Mr. NORBECK. It never could have passed the Senate at the time if it had been understood.

Mr. NYE. That is my understanding of the attitude of a great many Members of the Senate who were here in 1924 and who are still here.

I have said the national-origins basis is inaccurate, not practicable, unfair, and not understandable, and I shall now proceed to what I believe is a fair demonstration of the unfairness and of the inaccuracy of that basis.

In keeping with the statement made by the Senator from Minnesota [Mr. SHIPSTEAD] which I have just read, the 1790 records are prime factors in immigration quotas under the national-origins plan. It must be here called to the attention of the Senate that while this is the case, while the 1790 records are basic records in building national-origins quotas, many of these records were destroyed in the War of 1812 with Great Britain. The census records taken in 1790 in many of the States were then destroyed.

It must also be called to the attention of the Senate that the census of 1790 was only a matter of numbers and a matter of names, and not a matter of the origin of those people enumerated at all. Only by the names and only through the names could they trace the origin of those people. It should also be noted that in the 1790 census it is not reasonable to expect that there could be as accurate counting of numbers and enumerating of names as there can be in this great advanced day. Yet we find in the record before the Committee on Immigration witnesses from various departments, more particularly the Census Bureau, indicating that so far as they knew the record of 1790, the census of 1790, was as accurate as the last census taken by the United States. Those were statements that surprised immensely the members of the committee who heard them made at the time.

The figures were taken at a time when the population was scattered, when it was not easily reached over good roads and through such transportation facilities as are now available. It could not to my mind have been as accurate a census as the more recent censuses have been. It is known, too, that the census rolls which are available as having been recorded in 1790 do not contain the names of hundreds of people who are known to have been in the United States during that period. In the course of the Revolutionary War when people rallied to the cause of Washington and the cause of the Revolution, the names of men who were once in the Continental Army are contained upon the rolls of the Army, but the census of 1790, 15 years later, does not disclose the presence of all of those names appearing upon the rolls of the Army of Washington back in 1776, indicating more clearly to my mind that there was not accuracy in the recording of the census of 1790. In any event, and after all is said and done, what do names mean anyway? In a previous hearing conducted by the Committee on Immigration of the Senate on March 15, 1928, Dr. Joseph A. Hill, Assistant to the Director of the Census, declared in answer to a question:

> Senator KEYES. You have made a report which is embodied in Document No. 65, I believe?
>
> Doctor HILL. Yes, sir.
>
> Senator KEYES. Will you go over that briefly?
>
> Doctor HILL. We had to consider the problem, of course, in relation to the available data that were in existence and could be utilized in arriving at a determination of the national origins or the proportion of the total population which is derived from each country which is concerned.
>
> Now, we had the following classes of data: We had the century of population growth, in which is a classification of the population in 1790 on the basis of the names of heads of families. That classification was prepared some years ago before there was any thought of its being utilized in connection with this matter of regulating immigration on the national-origins basis. That was one class of data.

Mr. President, it is not denied that there has been resort to the use of names to determine what the origin of families in the United States might at this time be, and some strange things have occurred in connection with the use of names. I have referred to the many names which appear upon the rolls of Washington's Continental Army, but which do not appear upon the census rolls of 1790. I wish now to call attention to a most interesting disclosure contained in volume 1 of the Rise of American Civilization, by Beard. On page 85, I find this very interesting paragraph, showing how meaningless names may be and how meaningless names are here in America in so far as their relation to the origin of the family bearing a particular name is concerned. Mr. Beard says, in this volume:

> Meanwhile intercolonial migrations were breaking down the barriers of purely local circumstance. Puritans, scarcely established in Connecticut, pulled up their roots, moved into Long Island, and then made their way into New Jersey. Quakers from Plymouth, pained by conflicts with their neighbors, passed into Virginia and, meeting little friendliness there, eventually found a home in the western wilderness of North Carolina. A French Huguenot, Faneuil, tried his fortune in New York, transferred his business to Rhode Island, sent his son, Peter, to Boston. In the veins of many colonists of the second generation ran the blood of two or three nations, and an English name might well cover a Dutchman, a Swede, or a Scotch covenanter. For instance, Dirck Stoffels Langesstraet sailed from the Netherlands to the New World in 1657; a descendant married a Quakeress in New Jersey; the good old Dutch name became Longstreet; restless offspring took ship for Georgia; finally James Longstreet, trained at West Point, on the river once claimed by Holland, served the Southern Confederacy from Manassas to Appomattox.

So it is indicated how unreliable is a resort to names here in America, because they so often mean so little, as is shown here in the case of the Longstreet family.

Mr. WALSH of Montana. Mr. President——

The VICE PRESIDENT. Does the Senator from North Dakota yield to the Senator from Montana?

Mr. NYE. I gladly yield.

Mr. WALSH of Montana. In estimating the present population on a national-origins basis, can the Senator from North Dakota tell us what nationality would be assigned to the ancestor of a man by the name of Smith whose name appears on the census rolls of 1790?

Mr. NYE. The Senator from Montana will have to get the experts who have been at work on this matter to determine that question. I would not endeavor to do it.

Mr. WALSH of Montana. Can the Senator from Pennsylvania tell us?

Mr. REED. Mr. President, will the Senator from North Dakota permit me to interrupt him?

Mr. NYE. Yes.

Mr. REED. It has been explained by the chairman of the board of experts that that would depend entirely upon the locality in which the name was found. If it were found in certain parts of eastern Pennsylvania, for example, it would be assumed that the name was originally Schmidt, and so the ancestor would be of German origin. In other parts of the country where there had been no German immigration whatever, it would probably be assumed that the name was British in origin.

Mr. WALSH of Montana. If the man bearing the name resided in the city of Boston or New York, what origin would be assigned to him?

Mr. REED. I do not care to go into details, but that has been studied.

Mr. WALSH of Montana. I suppose it is generally understood that the Democratic candidate for President of the United States at the late election, one Alfred E. Smith, is of Irish origin.

Mr. NORRIS. If he had lived in western Pennsylvania, he would have been a Dutchman.

Mr. WALSH of Montana. In that case he would have been a Dutchman.

Mr. REED. It is quite possible.

Mr. WALSH of Montana. I am also reminded that Hamilton is a very famous English name; many eminent Englishmen have borne that name; and yet I am in the enjoyment of a very intimate acquaintance with a great many Irish people of that name.

Mr. REED. I am sure that is so.

Mr. WALSH of Montana. How can we possibly determine from these circumstances to what particular European country a man bearing either of those names belongs when the name is found in the census of 1790?

Mr. REED. I doubt whether we could, if that stood alone; but, Mr. President, the determination has been made on a very much more thorough study than that. The board of experts in the five years that they have been working on the subject have studied the matter of the Anglicization of names. They have gone to the records abroad, which in some countries are very complete, in showing the migration from those countries to particular parts of North America; they have studied all the county histories and the names used in them.

Mr. WALSH of Montana. I was reading a very interesting article the other day setting forth how migratory the American is. Obviously, the man who with his family migrated from some country in Europe and came over to this country evinced at least somewhat pronounced features of that characteristic. So we might easily assume, too, that he had migrated from one section of the country to another; indeed we are all familiar with the fact that many of the people who come to this country locate in one section, remain there a very short while, and move on to another.

Mr. REED. That was not so much the case before the First Census.

May I illustrate another way in which the experts have viewed this question, with the permission of the Senator from North Dakota?

Mr. WALSH of Montana. Let me remark that I have just been reading about a family that came to Pennsylvania and very speedily migrated to Virginia away back in colonial times.

Mr. REED. They would not do that to-day, perhaps.

Mr. WALSH of Montana. No; I suppose not.

Mr. REED. As an illustration of the study of names, let me say that Doctor Hill gave the case of a man named Cole whom, he said, he and most of us would immediately assume to be of British origin. He said they did not stop with that; that they went on to study the names of emigrants who departed from foreign countries, and they found a considerable strain of a family named Kool as coming from the Netherlands to New York. By studying that circumstance and the Englishmen of that name they satisfied themselves very accurately as to the percentage of people of that name who ought to be ascribed to the Netherlands. I do not think it is fair to say that they stopped with a superficial showing of names on the 1790 census.

Mr. WALSH of Montana. The German name Kohl is a very common one——

Mr. REED. Doctor Hill traced that also.

Mr. WALSH of Montana. Which, after a generation or two, might easily become Cole.

Mr. REED. Very easily; but that is all taken into account.

Mr. WALSH of Montana. But how is it taken into account? Upon what basis can a student to-day finding a man by the name of Cole determine whether his ancestor here in 1790 was Cole or Kohl?

Mr. REED. It is quite impossible, but it is not impossible to tell whether the individual named Cole in 1790 was of Dutch or German or British ancestry, because of the use of the county histories and the statistics of emigration which have been found in the archives of foreign countries and have been studied. Those sources of information elucidate the problem to a very great degree of certainty. But I do not mean to trespass further upon the time of the Senator from North Dakota.

Mr. WALSH of Montana. They may elucidate it to a great degree of certainty in the minds of some people, but it seems to me to be a perfectly impossible problem.

Mr. NYE. Mr. President, that is the way it appeals to me, and yet it must be realized by anyone who has given any thought to the subject at all that the matter of names has been largely resorted to in determining the quotas under the national-origins basis. But, comparable to that strange method which is taken to build up what we want to call a fair and accurate basis of immigration quotas, is the fact that there has also been taken into consideration in the building up of quotas the record of arrivals of immigrants in our colonial days, and those arrivals are not recorded in such a way as to indicate that so many of them who came in a certain ship were from Norway and so many from Great Britain and so many from Germany, but, instead, when a ship came to America bearing immigrants to this country, if it bore, we will say, 500 immigrants and they came in a ship flying the British colors, the records disclose those 500 immigrants to have had their origin in Great Britain.

On the other hand, if the ship was flying the German flag, it did not matter what was the nationality of the immigrants on that ship when it landed so far as the records were concerned, for they were all recorded as having been from Germany. While that practice was followed as well in the case of one country as of another, it must also be borne in mind that the great preponderance of shipping was under the British flag, and it must be borne in mind also that there were very few by comparison of the whole number who came into this country in those days under a flag other than the British flag.

Mr. President, if we are going back to the colonial period to determine the national origins of those who were here when we were in the making as a nation, it is for us to determine precisely where the people who were here in colonial days came from. That seems as plain as plain can be. But where did they come from? The general impression is that they came from Great Britain, and the quotas which have been worked out under the national-origins basis would indicate that very nearly half of them came from Great Britain.

To a certain extent it is true that they came from Great Britain; but it is not true that Great Britain was the place of their origin. In the cases of many of them they were not even born in Britain. In the cases of most of them they came from territories in Britain which had been builded up and which were populated by a people who had come there in more recent times from other nations of northern Europe.

A most interesting story to me regarding the make-up of our colonial population is contained in that very interesting old volume The Winning of the West, by President Roosevelt, in which he says this:

> Moreover, it is always well to remember that at the day when we began our career as a nation we already differed from our kinsmen of Britain in blood as well as in name; the word "American" already had more than a merely geographical signification. Americans belong to the English race only in the sense in which Englishmen belong to the German.

That was by President Roosevelt, Mr. President—a most significant statement, it seems to me; but, perhaps, not more so than are those found in this volume, The Passing of the Great Race, by Madison Grant, an acknowledged student of immigration problems, of our colonial history, and of our general make-up as a nation of people.

At page 83 of this very interesting volume I find this paragraph, which I read as indicating where our colonial stock came from:

> At the time of the Revolutionary War the settlers in the thirteen Colonies were overwhelmingly Nordic, a very large majority being Anglo-Saxon in the most limited meaning of that term. The New England settlers in particular came from those counties of England where the blood was almost purely Saxon, Anglian, Norse, and Dane. * * *
>
> New England during colonial times and long afterwards was far more Nordic than old England.

Then I find again, Mr. President, at page 88 of the same volume, this interesting paragraph:

> The native American by the middle of the nineteenth century was rapidly acquiring distinct characteristics. Derived from the Saxon and Danish parts of the British Isles and being almost purely Nordic he was by reason of a differential selection due to a new environment beginning to show physical peculiarities of his own.

And then I turn to an all-interesting paragraph by the same author at page 211 of that volume. Before I read that paragraph, however, I want to point out that it is one of the high signs of the advocates of national origins that we are going to adopt this national-origins basis of immigration quotas because it brings us so fine an element. The very best that humanity

has builded is going to be represented in the bulk and in the main in this national-origins plan, according to these advocates.

Mr. President, I say that under the plan nothing of the kind is being accomplished, because many countries which sent us immigrants in the Colonial days sent them here and they were attributed as having come to us from Great Britain. I say that Great Britain has not contributed the best of our population. I say that Great Britain is not entitled to that very great preponderance of advantage which is given to her under the national-origins plan, and I say it because Madison Grant has *this to offer* in his volume:

> Denmark, Norway, and Sweden are purely Nordic and yearly contribute swarms of a splendid type of immigrants to America and are now, as they have been for thousands of years, the chief nursery and broodland of the master race.

Mr. President, it has been demonstrated that a large part of these people from Denmark, Norway, and Sweden came into Britain, settled there in Britain, and then came on to America; and under national origins we are saying that the coming of those people, because they came directly from Great Britain, entitles Great Britain to this greater preponderance of immigrants under the national-origins clause.

With these facts in mind, Mr. President—the resort to names, the resort to the manifests of ships which carried immigrants to us in the earlier days, and the resort to that general belief that Britain was the early contributor to our population here in America—is it any wonder that people whose hearts in some degree trace back to those older countries, back to the Scandinavian countries, back to Germany, back to any of those countries, feel just a little bit hurt to think that under this national-origins plan they and their hind are going to be discriminated against, as they see it? Is it any wonder that they lack the confidence, the faith, and the belief in the accuracy and in the fairness of the national-origins basis which is professed by some advocates of the national-origins plan? It is not at all surprising to me because, as I have said, any basis of immigration quotas to be appreciated and to enjoy the confidence of the people must be understandable, must be fair, must be reasonable, and must in a reasonable degree be accurate.

Mr. President, the national-origins process—which I am sure Senators are going to have a chance in the next few days to better understand—is so thoroughly complicated as to make it difficult even for the experts who have worked out the quotas under this theory to explain clearly just what it is all about. In fact, at page 22 of the hearings it will be found that Doctor Hill declared what I am about to read. He was asked by the chairman:

> Will you explain now in some detail what that is and what the differential was?

This had relation to what is known as the "differential of fecundity." The chairman of the committee immediately wondered what this "differential of fecundity" was all about, and he asked the expert, Doctor Hill; and Doctor Hill replied:

> We did not determine the differential, but we used figures that disposed of it. The process was such a complicated one, involving the use of age statistics, that I really could not explain it briefly.

And it was not explained, briefly or at length, at any time.

Mr. President, of course, it is complicated; and, being complicated, it is not easy to understand. I have given myself and my thought fairly to this matter, and I should like to understand it. Perhaps we may be convinced of just what it is; perhaps our minds may be cleared up during this debate, and we may be satisfied that national origins is quite the thing to accept as a basis for immigration quotas; but at this stage I think it will be a most unfortunate thing if this country of ours adopts this new plan at a time and at a stage when people are so uncertain, so discontented, and so thoroughly of the belief that national origins is a thing resorted to to the end that a few people may be discriminated against for reasons which I shall not here debate or even mention. Yet, in spite of this complication, if we permit the national-origins clause to become effective, we are going to ask, we are going to expect, and we are going to want people to understand and to have faith in the national-origins plan.

Mr. President, so convinced have a majority of the Members of Congress been in more recent years that the national-origins plan was complicated, uncertain, inaccurate, and unfair that Congress has twice postponed the taking effect of the national-origins clause. So inaccurate is it generally believed to be that the experts have had difficulty in explaining to the committees from time to time just why they were arriving at such different conclusions with every set of figures they submitted as to the number who would be admitted from each country under the national-origins plan. I have previously quoted Commissioner Hull, Commissioner General of Immigration, and shown how dissatisfied and how lacking in confidence he is of the merit of the accomplishment that would be won under the national-origins clause. Mr. Hubbard, an assistant in the Immigration Service, has been equally emphatic in his opposition to it, stating in a recent address up in New York that a large basis for immigration quotas under the national-origins plan was that through the tracing of names, which we have debated here at some length this afternoon. And then, too, Mr. President, while all this is true, while we are in this uncertain mind, and for such good reasons as I have here recited, there are Americans to-day who point out and who repeat and repeat and repeat again that the only people who are opposed to the national-origins basis of immigration quotas are "hyphenated Americans."

Mr. President, there are thousands upon thousands of Americans who never have been charged with having any sympathies or with entertaining any hyphen with relation to their Americanism who are to-day as firmly convinced that national origins is a mistake as any German-American or Norwegian-American or British-American might be. No; there is quite general belief in opposition to the national-origins theory, and it is not dictated by a prejudice toward one country or against another country. Certainly those who charge that it is "hyphenated Americans" who are encouraging the repeal of national origins are not going to accuse the President of the United States of being a "hyphenated American"; and yet there is an undertow of agitation to the effect that the President never would have opposed national origins and would not have spoken for its repeal had he not been a candidate for the Presidency of the United States.

Mr. President, it seems to me that that is far-fetched. He had two associates on this commission which Congress appointed to determine the quotas that would prevail under national origins. He had upon that commission with him Secretary of Labor Davis and Secretary of State Kellogg. Neither one of them was a candidate for the Presidency, and yet they are equally emphatic in their opposition to the national-origins clause, and always have been. I think, Mr. President, it is most unfair that there should be resort to an influencing of the kind that has been undertaken and which endeavors to show that all people who are against the national-origins plan are prejudiced by leanings toward one nationality or toward another nationality.

Mr. President, I believe that the President of the United States when he declared his opposition to the national-origins clause in the campaign of last year knew what he was talking about; that he was uncertain in his mind as to the accuracy and as to the fairness of the national-origins basis which he had seen worked out by the experts who were serving under him and the other two commissioners. This is what the President said in his acceptance speech of last fall:

> We also have enacted restrictions upon immigration for the protection of labor from the inflow of workers faster than we can absorb them without breaking down our wage levels. * * *
>
> No man will say that any immigration * * * law is perfect. We welcome our new immigrant citizens and their great contribution to our Nation; we seek only to protect them equally with those already here. We shall amend the immigration laws to relieve unnecessary hardships upon families. As a member of the commission whose duty it is to determine the quota basis under the national origins law I have found it is impossible to do so accurately and without hardship. The basis now in effect carries out the essential principle of the law, and I favor repeal of that part of the act calling for a new basis of quotas.

Mr. President, late in 1926, three years before the late campaign, President Hoover wrote this language in a letter:

> In our opinion the statistical and historical information available raises grave doubts as to the whole value of these computations as a basis for the purposes intended. We therefore can not assume responsibility for such conclusions under these circumstances.
>
> I think it will be seen that the unsoundness of the statistical foundations is fully emphasized in this letter.

Mr. President, let us be done with the argument that it is alone those who have sympathies for one nation or another nation who are moved to opposition of the national-origins plan. That is not the case at all. I am ready to admit that there are people whose purpose to-day is driven by such a motive, such a selfish purpose, but that is not true of the entire number or more than a small part of those who are opposing national origins to-day.

There are others who have made their opposition to the national-origins scheme equally plain alongside of that opposition expressed by President Hoover. I hold in my hand a copy

of the Junior Advocate, over the name of its national councilor, expressing at the end of a year its accomplishments for the year, and we find they declare:

We supported the resolutions to repeal or postpone the national-origins clause from taking effect July 19, 1929.

Opposed it, of course, for reasons which they have clearly set forth.

Assistant Secretary of State Carr, as appears at the bottom of page 2 of the hearings conducted by the committee, said that he believed that the Secretaries—meaning Secretaries Hoover, Kellogg, and Davis—were unconvinced that the national-origins formula was workable. He said, too, that the department—that is, the Department of State—had not passed upon the sufficiency of information used as the basis, and he declined to pass upon the sufficiency of the figures for the basis there.

Commissioner General of Immigration Hull said in the hearings, first, that the change entailed great work on the bureau and much confusion, also that a change to national origins would very definitely be something of a calamity to put it in operation. And then, too, he said that it would be a hardship upon an expectant people, meaning, of course, those people in this country who were looking forward to the arrival of loved ones from foreign lands when they could get in under the quota laws, and the expectations of people in foreign lands who were looking forward to the day when they could join the loved ones who had come to this land ahead of them.

Mr. Hull said in his annual report for 1925:

The bureau feels that the present method of ascertaining the quotas is far more satisfactory than the proposed determination by national origin, that it has the advantage of simplicity and certainty. It is of the opinion that the proposed change will lead to great confusion and result in complexities, and accordingly it recommended that the pertinent portions of section 11, providing for this revision of the quotas as they now stand, be rescinded.

Mr. President, there are others who have spoken their minds, others who can never be accused of being hyphenated Americans, who have declared their opposition to national origin.

Mr. Steuart, Director of the Census, according to the Saturday Evening Post of October 10, 1925, declared that there are no figures in existence which show the national origin of the population of the United States.

Mr. President, it is not often, indeed, it is seldom, that I find myself in agreement with and working to the same end as that being sought by the Chamber of Commerce of the United States. But the Chamber of Commerce of the United States, upon hearing the report and recommendations of its committee on immigration some weeks ago, a committee which had given several years of study to this immigration question, adopted a resolution violently opposing the national-origins theory of immigration quotas, and I want to read that resolution:

The provisions of the immigration law of 1924 which apply the quota-limit system to the countries of Europe, Asia, Africa, and Australasia, on the 1890 census basis of foreign born, have been in operation now for nearly five years. These provisions have become an accepted part of our national policy. Our industrial and sociological life, our citizens, and our foreign-born residents, as well as foreigners abroad who are contemplating coming to this country for permanent residence, have largely adjusted themselves to this policy.

During this period the so-called national-origins provision of the 1924 immigration law, which originally was intended to replace on July 1, 1927, the quota-limit system based on the 1890 census, referred to above, has not been in operation. This provision purposes to limit immigration from Old World countries to about 150,000, as compared with the 164,667 at present admissible—

That ought to be 153,000 or 154,000 instead of 150,000—

and to allow an annual quota to any nationality equal to a number which bears the same ratio to 150,000 as the number of people living here in 1920 having that nationality bears to the total number of our inhabitants. This provision has been twice postponed by Congress in the face of problems, as yet unsolved, connected with the development of a satisfactory plan for the accurate determination of the racial content of the country.

It would be a mistake, in our opinion, to disrupt the adjustments which have been made under the actual operation of the law to date, and by changing the basis of present quotas unnecessarily to stir up racial antagonisms. We, therefore, recommend the repeal of the national-origins provision of the immigration law of 1924, and urge the continuance of the quota-limit system now in operation, based upon 2 per cent of foreign-born living in 1890.

The junior Senator from Missouri [Mr. PATTERSON] showed me this afternoon a very interesting letter from a member of the immigration committee of the Chamber of Commerce of the United States, a letter which I am sure he means to offer during this debate, bringing out in very clear and concise manner splendid points which ought to be voiced against this national-origins theory of immigration quotas.

Mr. President, so much for those who have voiced their opposition to national origins. One could go along indefinitely reciting the names, and the things which the people bearing those names have had to say about the inaccuracy and the unfairness of the national-origins clause, and it would not be necessary either to resort to the use of one name that was carried by a man or a woman who could fairly be accused of entertaining hyphenated American sympathies.

It has been said that the percentage of accuracy in arriving at the basis of immigration quotas under the national-origins clause is great. But Mr. Boggs, one of the experts who has been at work on the building of national-origins quotas, when before the committee, told the committee that one-seventh of the population of Europe which was involved in immigration quotas found itself in territory which was different from the territory in which that element lived prior to the late war. It is a repeated contention that, because of the change in areas of countries following the late war, it has been exceedingly difficult to work out a fair basis of immigration quotas under the present and prevailing 1890 plan. But Mr. Boggs told us that only one-seventh of the population that was concerned in our immigration quotas at all was thus affected.

The Senator from Pennsylvania [Mr. REED] at the time this point was brought out, immediately asked, "Are you including Russia in that?" Mr. Boggs said, "Yes, sir." The Senator from Pennsylvania then said, "And Russia is an area that has not changed sovereignty?" The point being that Mr. Boggs was confining himself to the percentage of actual population, while the Senator from Pennsylvania very evidently had in mind the percentage of accuracy in so far as the area involved was concerned. There is quite a difference between the basis of the population and the basis of area.

Doctor Hill, following Mr. Boggs on the stand, told us that the way of reaching the basis of quotas under national origins was not as accurate as the present basis, as it relates to population not affected by the war; in other words, that with respect to that 14 or 15 per cent of our population which has been affected by the change of area since the war, the national-origins basis is fairer than the 1890 basis. It follows, Mr. President, that, except for that 14 per cent, the 1890 basis is fairer than the national-origins basis is.

I am not going to continue much longer to-day—just a few moments—but I want to point out that the best proof of the inaccuracy of the national-origins basis of immigration quotas is found in the record of the estimates and in the record of reports which have been submitted to Congress by this so-called board of experts from time to time. Those figures have been not much more than estimates. Indeed, I think it fair at times to call them pure and simple guesses, and I do not know how anyone who will study and compare these reports which have been made by the same board of experts can declare that they have any degree of accuracy about them at all. At least, confidence in them is not invited.

The last estimate was submitted last February. If another estimate were to be made by the same board next February, I venture to say there would be material changes.

Mr. President, just follow me briefly through a few of the estimates which have been made. The first estimate was made at the time of the enactment of the immigration act of 1924. Another was made on January 7, 1927. Another was made on February 27, 1928. Another was made on February 21, 1929.

Let us take a few of the countries involved in this quota basis and see how the figures ascribed to them as being their title to immigration totals under the national-origins clause have varied under these estimates. Take Austria, for example. Under the first estimate Austria had 2,171. Then it went to 1,400. Then it went to 1,600. Then it went back to 1,400.

It was declared by the experts that under the national-origins plan Belgium would send us 251 each year. The next estimate puts the figure at 410; the next at 1,328; the next at 1,304.

At first it was declared that under national origins Czechoslovakia would have about 1,359. The experts next estimate gave them 2,248. The next estimate was 2,726. The next estimate was 2,874.

They said at first that Denmark would have 945 immigrants a year under national origins. The next estimate declared they would have 1,044; the next estimate, 1,234; the next estimate, 1,181.

Mr. EDGE. Mr. President, will the Senator yield?

Mr. NYE. I yield.

Mr. EDGE. I am very much interested in the wide range of those estimates. Does the Senator know whether the formula

through which they arrived at the totals was the same in each case or did they change the formula on each one of those occasions?

Mr. NYE. We have had an explanation here this afternoon of how they have gotten around this matter of tracing names, and tracing the origin of families through names. They found with each estimate a new way of arriving at a conclusion. As I said, if they were given two years more or one year more or three years more to study the problem we would get a brand new estimate, each time one was submitted it would be as materially different from the last estimate as these first ones have been by comparison.

Mr. EDGE. Mr. President——

Mr. NYE. I yield to the Senator from New Jersey.

Mr. EDGE. Then, as I follow the Senator, it is the understanding that they have found that they were mistaken with each effort and have made up a new formula, if I may call it that, or they certainly would not have had a different result.

Mr. NYE. They did not admit that they were mistaken.

Mr. EDGE. The mere fact that they changed it was an obvious admission, was it not?

Mr. NYE. Yes; it was.

Mr. REED. It is correct, is it not, that in the first report of 1927, which was the first report made by the quota board, the 1924 figures that have been given were unofficial estimates made in the course of the debate in 1924?

Mr. NYE. That is agreed.

Mr. REED. The 1927 figures were submitted by the quota board tentatively and expressedly as incomplete. They said so at the time they were submitted.

Mr. NYE. Yes; I think they did.

Mr. REED. That is one of the reasons why we gave them more time to study the question.

Mr. NYE. Yes.

Mr. REED. It is a fact also that the variation between the first and last quota figures under national origins is not nearly as great as the variation between the 1890 quotas estimated when the bill was passed and those in force to-day.

Mr. NYE. I have not seen the estimate which was offered when the bill was passed.

Mr. REED. I shall give that in my own time.

Mr. NYE. Going on and showing the inaccuracy of the thing and showing how the board of experts have wabbled all over the face of the globe in arriving at what would be the number of immigrants each country would be entitled to under the national-origins basis, I turn now to France. France under the first estimate was given 1,772, the next estimate 3,837, the next estimate 3,308, and the next estimate 3,086.

Germany: The first estimate 20,000, the next estimate 23,428, the next estimate 24,908, and the next estimate 25,957. Future estimates, if we get enough of them, may eventually put Germany back on the quota basis that she enjoys under the present 1890 basis.

Great Britain, it was first declared, would have a national-origins total of 85,135 immigrants. Then the next estimate said 73,000, the next estimate said 65,000, and the next estimate said 65,721. While Germany increased under each estimate in the total she may enjoy, Great Britain decreased, and I do not wonder that the German people are urging more estimates from the board before the national-origins basis is placed in effect.

Hungary at first would send us under the national-origins plan, 1,521. The next estimate dropped to 967. The next estimate was 1,181, and the next estimate dropped to 879.

Mr. REED. Mr. President, will the Senator permit an interruption?

Mr. NYE. Gladly.

Mr. REED. I think again he misspoke himself. The estimates made in 1924 were not made by the quota board. There was not any quota board then. They were unofficial estimates submitted at the time of the debate on the immigration bill.

Mr. NYE. Who submitted them?

Mr. REED. Originally Mr. Trevor gave them. It was I who put them in the RECORD.

Mr. NYE. But each subsequent estimate was furnished by the board.

Mr. REED. In 1927, 1928, and 1929 the quota board figures were given.

Mr. NYE. It seems to me Mr. Trevor's estimates have been accepted as authoritative in their study of the matter.

Mr. REED. On the contrary, it is because they have not been accepted and because the quota board made its own study that there is this variation between the 1924 figures and the quota board's report.

Mr. JOHNSON. Did not Mr. Trevor get his figures from the experts?

Mr. REED. There was not any quota board at that time.

Mr. JOHNSON. I know that, but did not Mr. Trevor get his estimates from the experts and was he not in constant touch with them all the time?

Mr. REED. He endeavored to deduce a basis of figures from the census reports.

Mr. JOHNSON. But he was in touch with the very men here who subsequently furnished the experts figures?

Mr. REED. Not at all. There was no one here qualified to give those figures at that time.

Mr. GLENN. Mr. President, may I ask the Senater from Pennsylvania who Mr. Trevor is?

Mr. REED. He has been very active in the matter of immigration restriction. He is the head of the Immigration Restriction League, as I recall it. He is a former Army officer now living in New York; that is, he was in our Army during the World War and he has been very active in the cause of the restriction of immigration.

Mr. GLENN. As I understand it, if he is the man I have in mind, he is now sending out literature in behalf of national origins?

Mr. REED. Yes; that is right.

Mr. GLENN. I think I received a special delivery letter from him yesterday.

Mr. REED. That is no doubt correct.

Mr. FESS. I think each of us did.

Mr. NYE. Now, let me continue. The Irish Free State under the first estimate submitted—or under the Trevor estimate, was—6,330. Then came an estimate from the board of 13,000, the next estimate 17,427 and the last estimate 17,853. No wonder some folks with a little strain of Irish in them are anxious that the board of experts make further estimates before the national origins becomes effective, because with each estimate up has gone the size of the quota that would go to the Irish Free State.

Then here is the case of the Netherlands. The first estimate was 2,762, then came the estimate of 2,421, then the estimate of 3,083, and then finally the estimate of 3,153.

Norway: At first it was decided they would be entitled to 2,053, then 2,267; then another estimate of 2,403, and another estimate of 2,377.

Poland: It was first declared under the national origins that Poland would have 4,535; then came the estimate of 4,978, then the estimate of 6,090, and then the estimate of 6,524.

In the case of Portugal the first guess was 236, the next guess was 290, the next guess 457, and the final guess 440.

Rumania started in with 222, then 506, another guess of 311, and, finally, the last estimate of 295.

Russia at first they said would have 4,002 under national origins. Then came an estimate of 4,781, then an estimate of 3,540, and, finally, a guess of 2,784—wabbling all over the scale of figures.

Spain they first said would have 148, then they said 674, then they said 305, and, finally, they said 252.

Sweden, the Trevor estimate said, would have 3,072. Then along came an estimate of 3,325, then an estimate of 3,399, and, finally, an estimate of 3,314.

Yugoslavia had a first guess of 591, then 777, then 739, and, finally, 845.

Naturally we would expect great improvement as these experts went on. We would expect that as they worked out the estimates there would be little variation between the figures last submitted and those submitted preceding the last submission. But follow, if you will, what is true in the case of the last estimate and the estimate submitted just preceding that.

Austria in the preceding estimate had 1,639, and dropped, according to the last estimate, to 1,413. France in the preceding estimate had 3,308 and in the last estimate 3,086. They dropped off the 300. In Germany there was an increase between the last two estimates from 24,908 to 25,957. Great Britain dropped from 65,894 to 65,721. Hungary dropped from 1,181 to 869. The Irish Free State jumped from 17,427 to 17,853.

We find all through here a difference, as in the case of Germany, in the last two estimates of 1,000, in the case of Russia a difference of 750, in the case of Ireland a difference of 450, in the case of Poland a difference of 550, in the case of Italy a difference of 200, a 30 per cent change in the case of Lithuania, a difference of 300 in France, and so it goes. Is it any wonder, I repeat, that there are people who seriously question the accuracy and the fairness of national-origins basis as a fair basis for immigration quotas? Not at all.

There have been some exceedingly wild statements made with reference to national origins, and I expect they have been made alike upon both sides in the controversy, but I see no ground and I see no reason for people to resort to the claim that the national-origins basis of immigration, if it discriminates

against any people at all, discriminates against the people of southern and western Europe. That is false. That is not the case at all. The immigration quotas under the national-origins provision will give increased quotas to all of the countries of southern and western Europe. Southwestern Europe will enjoy an increase of 4,000 under national origins, while Great Britain is enjoying an increase in its quotas. The five nations as well in northern Europe—that section which has contributed our best in American immigration, Norway, Sweden, Denmark, Germany, Ireland—are suffering a decrease of approximately 50,000 in the number who can come to us under the national origins. No; it is not true that if this plan is discriminatory at all it is discriminatory against the people of southwestern Europe.

The contention has also been offered that the American Federation of Labor is approving and is encouraging the operation of the national-origins clause. That is not true. The American Federation of Labor has made its stand very clear upon that score. It hopes to see the national-origins clause repealed.

There has been, too, the contention offered here, and I do not like to believe that it is for an unfair purpose, but it has been offered, namely, that under national origins we are going to depopulate or cut off that source of immigration which has filled our hospitals, which is constituting the numbers of paupers whom we are entertaining in this country, who are carrying about the dread diseases in this country, and that under national origins we are going to reduce the number of people of that kind that come to us. Immediately the question is asked, How is it going to do that? We get a discourse on the mass of immigration which comes into America from Mexico, which is not affected one iota by the national-origins clause or by the 1890 basis of immigration quotas. I say it is unfair to resort to those arguments in view of the fact that they do not apply in the least degree to the kind of immigration we are getting under the present basis of quotas and under the basis that would prevail under national origins.

I have said that this is not a controversy between believers in restricted immigration and those who are not believers in restricted immigration. I have said it is my plan to offer an amendment to the bill from the further consideration of which we are trying to discharge the committee that will provide for such scaling down of quotas under the 1890 plan as will give us practically the same number or less of immigrants who can be admitted to America each year under the 1890 basis as would be admitted under the national-origins plan.

I have had made a large chart dealing with immigration figures. I did not contemplate this morning that there would be an opportunity for such a lengthy discussion this afternoon upon the subject and I therefore did not have the chart hung on the wall of the Chamber.

I want to reserve until to-morrow a chance to argue in support of the present basis of immigration, namely, the basis which determines immigration on the percentage of foreign-born population found in America in 1890. But in showing the fairness of that plan I am not going to argue, I do not now argue, and I can never argue, that the 1890 basis is altogether accurate and fair; but I will argue that it is a fairer basis upon which to build immigration quotas than is the national-origins basis, and that we have a better opportunity to afford an understandable basis of quotas building upon the 1890 census than we do upon the national-origins basis.

I shall argue that point to-morrow, as I shall also argue, Mr. President, a point that is being brought into this controversy, a point that is bound to come up in this debate, whether I bring it up or not, a point that is uppermost in many minds, namely, that the national-origins basis of immigration is going to be a direct thrust at the slacker element, about which we heard so much in the United States during the course of the late World War. I am going to demonstrate that nothing of the kind is true; I am going to demonstrate that a basis of quotas under the national-origins clause is going to bring us no fewer slackers than are coming to us under the 1890 basis of immigration quotas.

I am going also, in that connection, Mr. President, to recite a few of tthe things that one Demarest Lloyd, who, in a way, sets himself up as being the grand patriot of this generation, has said about those who stand opposed to the national-origins basis of immigration quotas. I am going to show, too, Mr. President, that if we want to base immigration quotas upon a patriotic foundation the thing for us to do is to go back and take the rolls of Washington's Continental Army, which fought the real battle of America, which made the real sacrifices for America. Taking that basis I will demonstrate, if you please, Mr. President, that the great bulk of people who would come into the United States under it would be not British.

With that explanation I have no more to say this afternoon, Mr. President, but will hope to be recognized again to-morrow.

INVESTIGATION RELATIVE TO POSSIBLE CANCER CURE

Mr. HARRIS. Mr. President, there is lying on the table a resolution (S. Res. 79) which was submitted by me on May 16 (calendar day May 29), 1929, providing for a thorough investigation of the means and methods whereby the Federal Government may aid in discovering a cure for cancer. I ask unanimous consent that the resolution may be taken from the table and considered at this time. I desire to modify it before the resolution shall be agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. WATSON. Mr. President, I will ask the Senator from Georgia if the Senator from Washington [Mr. JONES] is willing that action shall be taken on the resolution at this time?

Mr. JONES. Yes; I have no objection to the resolution.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the resolution, which was read, as follows:

Resolved, That a special committee of five Senators, to be appointed by the President of the Senate, is authorized and directed to make a thorough investigation of the means and methods whereby the Federal Government may aid in discovering a successful and practical cure for cancer and to report to Congress as soon as practicable the results of such investigation, together with its recommendations for legislation and appropriations. The Public Health Service, the National Academy of Sciences, and all executive departments and independent establishments of the Government are requested to cooperate with such committee in carrying out the purposes of this resolution.

For the purposes of this resolution such committee or any duly authorized subcommittee thereof is authorized to hold hearings, to sit and act at such times and places during the sessions and recesses of the Senate until its report is submitted, to employ such experts and clerical, stenographic, and other assistants, to require by subpœna or otherwise the attendance of such witnesses and the production of such books, papers, and documents, to administer such oaths, and to take such testimony and make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per 100 words. The expenses of the committee, which shall not exceed $———, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

Mr. HARRIS. I desire to modify the resolution, in line 1, after the word "That," by striking out "a special committee of five Senators, to be appointed by the President of the Senate" and in lieu thereof inserting "the Commerce Committee or a subcommittee thereof"; and by striking out all of page 2.

The PRESIDING OFFICER. The resolution will be so modified.

The resolution, as modified, was agreed to, as follows:

Resolved, That the Commerce Committee or a subcommittee thereof is authorized and directed to make a thorough investigation of the means and methods whereby the Federal Government may aid in discovering a successful and practical cure for cancer, and to report to Congress as soon as practicable the results of such investigation, together with its recommendations for legislation and appropriations. The Public Health Service, the National Academy of Sciences, and all executive departments and independent establishments of the Government are requested to cooperate with such committee in carrying out the purposes of this resolution.

DEDICATION OF AUDITORIUM AT ATLANTIC CITY—ADDRESS BY THE VICE PRESIDENT

Mr. EDGE. Mr. President, the Vice President of the United States made a very notable address in Atlantic City, N. J., last Friday evening, May 31, 1929, the occasion being the opening and dedication of the largest convention hall in the world. I ask unanimous consent that his address may be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD.

The Vice President spoke as follows:

Mr. Chairman, ladies, and gentlemen, as I look over this tremendous gathering of our people many thoughts crowd my mind. The collective will of the United States for good seems centered in you; the sense of your irresistible power can not be escaped.

We are gathered here this evening in a threefold celebration to mark with appropriate form and ceremony three important occasions. Seventy-five years ago a new municipality came into existence. To-night we are formally dedicating to the use of the Nation this new and mighty auditorium. Fifty years ago the incandescent electric lamp was presented to the world. Where and how to start is a question—the city, the auditorium, or the electric light. Each is an important

event and each worthy of complete and separate treatment. I will take them in the order stated.

There is an island in the Atlantic Ocean, off the shores of Atlantic County, in the State of New Jersey. It is 10 miles long and has a magnificent beach. There are various accounts of the appearance of the place in 1850. Some tell us it was a discouraging and depressing collection of sand dunes. Others, and I prefer to believe them, present a different picture. It was a beautiful spot, covered with dense and extensive groves of trees. The bay abounded in large quantities of shell and other fish, an enticing spot for those fond of angling and sailing. Seacoast game abounded; there were extensive gunning grounds. The beach scenery was diversified and interesting, unsurpassed, if equaled, on our coast. The country was proverbial for its pure air, fine water, and extreme healthfulness. It is an old saying that time makes many changes. There is no better illustration of it than in the growth of Atlantic City. Conceived to lighten man's spirit; to banish care; to bring joy and gladness to the people; this city has fulfilled its object beyond the wildest dreams.

In 75 years it has grown from nothing to a magnificent city known throughout the world. Vacationists from remote towns and villages read of it and are fired with the desire to see it, each for himself. As in the ancient days all roads led to Rome, so now do all roads lure the vacationist to Atlantic City. He skimps, scrapes, and saves for years sometimes that he may make the trip.

The bathing village of 1850 has changed indeed. For the occasional bather of then there are 100,000 daily now, in the season. For the occasional sportsman from the city there are now 15,000,000 pilgrims annually. For the 1 hotel there are 1,200. For the pioneer excursion of 600 from Camden there are the hundreds of thousands disgorged by many trains from many and far-distant points.

I am, and doubtless you are, duly impressed with the greatness of Atlantic City, this Mecca of pleasure seekers; this lively and stirring city which so well expresses the joyousness, light-heartedness, and gaiety of our people; this city on our threshold, facing the Old World, which, though thousands of miles of the Atlantic divide it from its European counterparts (if indeed there be a counterpart), gives back sparkle for sparkle and glitter for glitter the brilliance of the rival Meccas of pleasure facing it.

The resplendent arch of jewels on the boardwalk at States Avenue, which we have viewed to-night, fittingly symbolizes the city, fittingly marks a diamond jubilee. It is vain for me to attempt to describe Atlantic City, even if I could do justice to it. What is another celebration to a city whose whole existence always has been to celebrate; where each year there is excuse for a newer and greater fete? I have told you of the "then." You must tell yourselves and your children's children of the splendid "now."

THE AUDITORIUM

We are here to dedicate formally to the use of the Nation this huge auditorium, the city's latest and crowning achievement.

The national aspect of the building can not be overlooked. Year in and year out people from all parts of the United States, even from the four corners of the earth, by the millions, are attracted to this city. Not one visitor, I am sure, will fail to visit and inspect this building. Each day at Atlantic City there are not one, but several conventions in session; not a few, but hundreds of thousands of visitors. It is hard to conceive of a better place for a national auditorium, for a permanent exposition of the many and diverse interests of our country.

It is equally difficult to conceive a more adequate building for the purpose. We are perhaps too prone to visualize such things in superlatives and statistics. We repeat too glibly: "Atlantic City's Convention Hall is the world's largest auditorium; it cost $15,000,000; it seats 41,000 people in the main auditorium, and is capable of seating the entire permanent population of the city—66,000—and still leave room to spare. On its main exposition floor, an unobstructed area of some 2½ acres, beneath an arched ceiling 135 feet above, and facing what is now the world's largest stage, might be set the famous Madison Square Garden, and concurrently there might be staged in the remaining area a football game, a track meet, and several meetings."

We here to-night do not need the statistics to impress us. We see the reality and are a part of it. The building can not have failed to impress you as it has me. Mayor Ruffu, the people of Atlantic City, the architects, contractors, workmen—all who have had a part in producing this beautiful auditorium—are to be congratulated.

We are privileged to have the opportunity to assist at this formal opening. It is fitting that the national aspect of the building should be emphasized by the third object of our presence, the opening ceremony of Light's Golden Jubilee.

LIGHT'S GOLDEN JUBILEE—THE INCANDESCENT ELECTRIC LAMP

(A) BIRTH OF EDISON; THE EDISON PIONEERS, ETC.

On February 11, 1847, at Milan, Ohio, there occurred an event which, though not recognized as such at the time, has since proved to have been one of the greatest importance to all mankind. On that day, 82 years ago, our great inventor, Thomas Alva Edison, was born.

If, in his long life of incessant labor and toil, in his years of constant study and research in the realms of applied science, he had never produced another invention than that which was disclosed to the world on October 21, 1879, my statement still would be true. We are assembled to-night to pay honor to a genius; to one of our fellow countrymen. There is an organization known as The Edison Pioneers. It is a group of men who have labored and grown up with Mr. Edison. He and they, as well as we, were fortunate in their association. As a recognition of Mr. Edison's services, the Pioneers have planned an international celebration to be known as Light's Golden Jubilee, during the period commencing to-day and ending October 21 next—thus marking the fiftieth anniversary of the incandescent electric light.

Such a method of recognition is well deserved. It has universal approbation. Our illustrious President, Herbert Hoover, is the honorary chairman of the committee sponsoring this celebration. He has indicated his willingness to act in any capacity which will mean a genuine tribute to Mr. Edison's services. Our able Chief Executive is not only one of the foremost of administrators, but also a great engineer. He has a keen appreciation of the universal value of Mr. Edison's services; of the world-wide value of the almost incredible number of Mr. Edison's inventions, their scope, and their far-reaching effect on the lives of all.

(B) THE STORY OF LIGHT

The advance in the art of illumination since 1879, when the incandescent electric light made its appearance in the world in obedience to the inquiring mind and inventive genius of our fellow countryman, is truly remarkable. The bewildering and inspiring exhibition of lighting to-night, in this building and out on the boardwalk, is a fitting demonstration of the heights to which the art has climbed in the last 50 years. The story of light is quickly told.

The fire of Prometheus

In the beginning we had the sun, the moon, and the stars. Night fell and all was darkness. Man crawled into his cave and slept until the return of the sun, if he could sleep at all because of cold and fear of the blackness of night. Long before written history began we know he had discovered fire. Just how, we do not know. Let us accept the Greek legend that the Titan, Prometheus, a brother of the Olympian gods, had pity on man. Brands from the fire of Prometheus, carried from one place to another, soon established the torch as one of our most useful possessions and displaced the pale glimmering light of hundreds of fireflies imprisoned in a rude sort of lantern, a very unsatisfactory darkness-dispelling expedient one time used.

Oils and fats

Soon was discovered the fact that burning fats and oils furnished a good light. Since then, and until the nineteenth century of the present era, man made slight progress beyond this in the art of illumination. The material for light did not change. The means for producing it were made easier and quicker by flint and steel, and improvements in the beauty and utility of light containers were wrought, but little else was done.

Gas

The nineteenth century marks a series of great strides forward from the fire of Prometheus. Prior thereto, for some 200 years, it was known to scientists that gas could be manufactured and used for illumination, but the marvel was not generally known. About 1800, scientists in various parts of the world were working to perfect gas as a new, practical, and cheap source of illumination. It is interesting to note that in London in 1840 the reply to a proposal to light the House of Parliament by gas was: "Take it as a fixed and settled point that wax candles remain."

In this country the discovery during the first half of the nineteenth century of natural gas in several of your States gave great impetus to the movement for street lighting by gas.

Electricity

The tremendous step forward marked by the application and use of gas and oil inspired the people. They were not satisfied; they wanted lights brighter, safer, and still more convenient. The possibilities of electricity in this regard as shown by the discoveries, inventions, and improvements during the same period became more generally known. In 1876 the Philadelphia Centennial Exposition was partially illuminated by electricity. The light was a scientific curiosity; an impractical novelty, inordinately expensive, and difficult to produce and maintain. All the lights went on or off at once and were usually off. It remained for our own wizard of electricity, Thomas Alva Edison, to solve these problems; to make a magnificent threefold gift to the waiting world in the form of an incandescent electric lamp which was practical, brilliant, cheap, and capable of being turned on or off by itself; a powerful dynamo to supply the current; and a complete system of lighting from a central station.

What a contrast between to-night with its tremendous crowd of happy and approving people, gathered in this huge auditorium, which is lighted so marvelously, and the night 50 years ago come next October 21 in the famous laboratories at Menlo Park, N. J., with Mr. Edison

and his coworkers gathered around in readiness for the test of the incandescent electric light. Let me quote you Mr. Edison's own modest description of that night:

"We sat and looked and the lamp continued to burn, and the longer it burned the more fascinated we were. None of us could go to bed and there was no sleep for us for 40 hours."

(C) DISTINGUISHED VISITORS PRESENT

There are gathered with us many famous men; many all-powerful figures of the diplomatic, legislative, administrative, and judicial world; many great men whose names are a power in finance and industry; in the arts and sciences.

This representative gathering is not confined to our own people. It is an international, not merely a national gathering. That Mr. Edison's tremendous contributions to the advancement of civilization are not ignored by the rest of the world, but are indeed fully recognized and commended by it, is proved by the presence here this evening of a man who is a true and understanding friend of our country, our people, and our fellow countryman whom we are honoring to-night. This visitor is one of the most distinguished of diplomats; the dean of the diplomatic corps in Washington; by virtue of his position representing not only the voice of the people of that other great English-speaking nation but, on this occasion, the voice of all nations—Sir Esme Howard, the British ambassador.

There is present another diplomatic visitor, who also is known for his rare understanding of, and sympathy with our people and country, their aims and ideals. He, too, is a sincere admirer of Mr. Edison and his works. I refer to Don Alejandro Padilla y Bell, the Spanish ambassador.

It is a pleasure to be here with your United States Senators, Mr. EDGE and Mr. KEAN, the members of the New Jersey delegation to Congress, the governor of your great State, and prominent State officials. It is also gratifying to see so many Members of the Congress here.

After all, you and I, ladies and gentlemen, in ourselves, are so far removed from true greatness that it is only in the aggregate our presence constitutes a tribute to Mr. Edison. But those whom I have mentioned, and those others whom I have not had time to mention, by their very presence alone mark the sincerity of their regard and the regard of the world for him who is the greatest of all voluntary servants of the people.

(E) TRIBUTE TO EDISON

In conclusion, let me say that the greatest honor we can confer on Mr. Edison is to recognize him not after death but now, during his lifetime, as a patriot; as one of our greatest public-spirited citizens, one who has abundantly proved his love of country; one who has indeed zealously guarded and advanced its welfare.

It is customary to think of patriots and patriotism in terms of wartime service to the country. Peace-time service is taken as a matter of course, and not generally thought of as such. Yet it is more truly so, for it is done without the glamor and pomp of war; without the fever which takes us out of and beyond ourselves when battle is impending and present, and spurs us to glorious sacrifice.

The record of Mr. Edison's services, both peace time and war time, undoubtedly entitles him to rank among our greatest patriots. In him we have a man whose every action speaks louder than can any words, of his love for his country and zealous guarding of its welfare and the welfare of its people—not only of our own people but of all mankind. He has devoted his entire life to experiment and research; to probing, trying, testing, retesting, and perfecting inventions of paramount and far-reaching benefit. If there is such a thing as a superpatriot he is that. In offering this appreciation of his services, I hope he will realize words fall far short of our true feelings.

I know all of our people share my sincere belief that no tribute can be too great for this man; none sufficient truly to measure his worth. It is our earnest prayer that he may be spared this life in full health and vigor for many a long year to come.

COLORADO RIVER DEVELOPMENT

Mr. VANDENBERG. From the Committee on Printing I report back favorably without amendment the resolution (S. Res. 77) submitted by the Senator from Nevada [Mr. ODDIE] May 29, 1929, providing for the printing of 1,200 additional copies of Senate Document No. 186, relating to the Colorado River development. Inasmuch as the document is now ready for the press, I ask unanimous consent for the immediate consideration of the reported resolution.

The resolution was considered by unanimous consent and agreed to, as follows:

Resolved, That 1,200 additional copies of Senate Document No. 186, Seventieth Congress, second session, entitled "Colorado River Development," be printed for the use of the Senate document room.

EXECUTIVE SESSION

Mr. WATSON. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened; and (at 4 o'clock and 25 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, June 4, 1929, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate June 3 (legislative day of May 16), 1929

MEMBER OF THE PUBLIC UTILITIES COMMISSION OF THE DISTRICT OF COLUMBIA

Mason M. Patrick, of the District of Columbia, to be a member of the Public Utilities Commission of the District of Columbia for a term of three years from July 1, 1929. (Reappointment.)

PUBLIC HEALTH SERVICE

The following-named passed assistant surgeons to be surgeons in the Public Health Service, to take effect from date of oath:

Russell R. Tomlin. Floyd C. Turner.
Lester C. Scully. Marion R. King.

These officers have passed the examination required by law and the regulations of the service.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 3 (legislative day of May 16), 1929

ASSISTANT TO THE ATTORNEY GENERAL

John Lord O'Brian.

WITHDRAWALS

Executive nominations withdrawn from the Senate June 3 (legislative day of May 16), 1929

To be first lieutenants

Second Lieut. Edward Fearon Booth, Air Corps, from May 18, 1929.

Second Lieut. Gerald Goodwin Gibbs, Coast Artillery Corps, from May 20, 1929.

HOUSE OF REPRESENTATIVES

MONDAY, *June 3, 1929*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

O God, the Father of us all, with our hands in Thine, we shall be led by the right pathway. Consider and hear us; make us sincere and serious, vigilant and willing to do everything that truth requires. Lead us through the ever-green pastures of Thy grace; keep our feet from the pitfalls and the dark precipices. Seal in our hearts beautiful sentiments, direct and courageous motives. Spare us from the drowsiness of carelessness, and do not allow it to steal over us. Blessed Lord, shine on our way, and the blindness of materialism shall not betray us nor the intoxication of pleasure lure us to take the fatal step. Take us, fascinate us, and enthuse us with the spirit of sacrificial and patriotic devotion. Amen.

The Journal of the proceedings of Friday, May 31, 1929, was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Craven, its principal clerk, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H. J. Res. 92. Joint resolution to provide an appropriation for payment to the widow of John J. Casey, late a Representative from the State of Pennsylvania.

SENATE ENROLLED JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to an enrolled joint resolution of the Senate of the following title:

S. J. Res. 34. Joint resolution authorizing the Smithsonian Institution to convey suitable acknowledgment to John Gellatly for his offer to the Nation of his art collection, and to include in its estimates of appropriations such sums as may be needful for the preservation and maintenance of the collection.

NORTHERN PACIFIC LAND GRANTS

Mr. COLTON. Mr. Speaker, by direction of the committee to investigate the Northern Pacific land grants I ask unanimous consent to take from the Speaker's table the bill S. 669 for immediate consideration.

The SPEAKER. The gentleman from Utah asks unanimous consent to take from the Speaker's table the bill S. 669 for immediate consideration. Is there objection?

Mr. STAFFORD. Reserving the right to object, I think this is too important a measure to be considered at this time.

Mr. COLTON. If the gentleman from Wisconsin will withhold his objection I can assure him that this has been considered for four years. This bill passed the House during the last session of the Seventieth Congress, but failed to pass the Senate. It has now passed the Senate. The committee has given it a very thorough and careful consideration. It has been explained to the House a number of times. I extended my remarks in the RECORD at the suggestion of the former leader on the Democratic side. It is a technical matter and unless we should give many hours of debate to it a detailed explanation could not be made. I think that a satisfactory explanation in a general way could be made in a few minutes, and I shall be glad to do that.

Mr. STAFFORD. I have examined the bill and I have read the proceedings in the Senate. The Senate struck out the preamble. It is a most important matter and the mere fact that a former Congress has passed it ought not to conclude us. I ask the gentleman to withdraw the request for the time being at least.

Mr. GARNER. Mr. Speaker, I ask unanimous consent to address the House for one minute.

The SPEAKER. Is there objection?

There was no objection.

Mr. GARNER. Mr. Speaker, this matter was presented to me this morning and I said I would not object to it, but I intended to make a statement. Matters of this importance, legislation of any particular importance, ought not to be called up under the agreement we had at the beginning of this session, under which few important committees have been created. Therefore all objections to a bill must come from the floor and somebody must take the responsibility or let it go through. I appeal to the gentleman from Connecticut to carry out the original program and not bring in legislation here unless you are going to have a committee consider it. If you do not do that you are going to embarrass yourself and the membership of the House or let something go through which ought not to become a law without thorough consideration and analysis by a committee of the House of Representatives.

Mr. TILSON. We have only allowed matters to come up which were generally understood by everybody on both sides of the House and by unanimous consent.

Mr. GARNER. I agree; but somebody has to take the responsibility of objecting. This particular bill passed the House of Representatives in the last session of Congress, passed here by unanimous consent and went to the Senate. I am not going to make any objection to it, but it is a far-reaching piece of legislation, undertaking to settle a dispute between the Government and the Northern Pacific Railroad that has been in existence for 60 years. I say that it ought to have thorough consideration by some committee of the House and not bring it up here by unanimous consent.

Mr. TILSON. The gentleman understands that it has been considered by a committee of the House.

Mr. GARNER. Yes; but this is a new Congress. This is the Seventy-first Congress and not the Seventieth Congress.

Mr. TILSON. But the facts are the same as they were in the last Congress.

Mr. COLTON. The committee considering this is regularly organized and was continued by a resolution passed by Congress.

Mr. GARNER. The only point I am making is that at the beginning of this session there was an announcement made that there would be no legislation in this session of Congress except those matters that would come before the Agricultural Committee and the Committee on Ways and Means.

I agree that this is a matter of importance, but there are a hundred matters of importance that ought to be taken up and considered at this session of Congress. If you are going into the consideration of matters of importance, let us take up the matter of Muscle Shoals and many other important matters and dispose of them at this session of Congress.

The SPEAKER. Is there objection?

Mr. STAFFORD. Mr. Speaker, I object for the time being.

The SPEAKER. Objection is heard.

Mr. COLTON. Mr. Speaker, I withdraw my request for the present.

BOUNDARIES OF YELLOWSTONE NATIONAL PARK

Mr. CRAMTON. Mr. Speaker, I ask unanimous consent to speak for three minutes, leading up to a unanimous-consent request for the consideration of a bill.

Mr. GREEN. Mr. Speaker, reserving the right to object, in the event that that request is granted, I ask unanimous consent to proceed for four minutes.

Mr. CRAMTON. I shall withdraw my request, Mr. Speaker. The gentleman from Florida can make his request first, if he prefers.

Mr. GREEN. Mr. Speaker, I ask unanimous consent to proceed for four minutes on an important matter.

The SPEAKER. Is there objection?

Mr. SNELL. Mr. Speaker, reserving the right to object, we have provided for four hours of general debate to-day, and Members are here for that purpose. I doubt if it is good policy to let a lot of extraneous matters come in at the present time, and unless it is something very important, I shall object to anything coming up now.

Mr. CRAMTON. Mr. Speaker, if the gentleman will permit, I was not asking for time to make a speech; but in connection with a matter of legislation, wherein the action of the House was nullified by accident. I want to call it to the attention of the House.

Mr. SNELL. But it seems that there are several other speeches that would depend more or less upon the gentleman's remarks.

Mr. CRAMTON. I thought that the gentleman would rather have it come up to-day than have it to-morrow.

Mr. SNELL. If it is important, I do not care.

Mr. TILSON. Mr. Speaker, I think on Wednesday we might have more time than either to-day or to-morrow.

Mr. SNELL. If it is absolutely important, we can take it up to-day; but if it is not, let it go over until Wednesday.

Mr. CRAMTON. I am not certain of being here Wednesday.

Mr. SNELL. The rest of us have to stay here.

Mr. CRAMTON. Then, Mr. Speaker, I ask unanimous consent if the gentleman from Florida will permit, for the present consideration of H. R. 3568, to amend section 1 of an act entitled "An act to revise the north, northeast, and east boundaries of the Yellowstone National Park in the States of Montana and Wyoming, and for other purposes," approved March 1, 1929, being Public Act No. 888 of the Seventieth Congress.

The SPEAKER. The gentleman from Michigan asks unanimous consent for the present consideration of a bill, which the Clerk will report.

Mr. CRAMTON. And I shall make my statement in connection with that.

Mr. GREEN. Mr. Speaker, I shall not object. All I want is two or three minutes.

Mr. CRAMTON. Mr. Speaker, in the last Congress the Senate passed a bill with reference to the boundaries of the Yellowstone National Park. That bill came to the House carrying a certain proviso to prevent the building of roads and the building of hotels in that area. I opposed that proviso, and on my motion it was stricken out of the bill by unanimous action of the House. The Clerk in making the message to the Senate, accidentally restated the amendment as having been to strike out certain lines and insert the following. That is to say, he struck out that proviso, and then put it right back in again verbatim.

Mr. SNELL. Is this something that passed the House at the last session?

Mr. CRAMTON. It passed the House, and that error was made and the action of the House was nullified by the error in the message to the Senate. The Senate concurred in the amendment as messaged to them and it became the law in that form.

Mr. GARNER. This is a controversy between the House and the Senate?

Mr. CRAMTON. No; it is not.

Mr. GARNER. The gentleman just said the Senate adopted a certain amendment and that he moved to strike it out, that it was stricken out by the House. There must be a controversy between the Senate and the House. That sort of thing ought not to be taken up here at this time.

Mr. CRAMTON. Those in charge of the legislation in the Senate agreed to accept the action of the House.

Mr. GARNER. But those in charge of legislation do not constitute the entire Senate. Somebody caused that to be inserted in the Senate, did he not?

Mr. CRAMTON. No.

Mr. GARNER. Then it just voluntarily got in there, did it?

Mr. CRAMTON. It was a Senate bill.

Mr. SNELL. Mr. Speaker, for the present, I object.

Mr. CRAMTON. Then I ask unanimous consent for the present consideration of House Joint Resolution 93.

Mr. SNELL. I am going to object to the consideration of any more bills.

Mr. CRAMTON. I shall perform my duty by asking unanimous consent for its consideration.

The SPEAKER. The gentleman from Michigan asks unanimous consent for the present consideration of House Joint Resolution 93.

Mr. SNELL. Mr. Speaker, I object.

LEAVE TO ADDRESS THE HOUSE

Mr. GREEN. Mr. Speaker, I ask unanimous consent to proceed for three minutes.

The SPEAKER. The gentleman from Florida asks unanimous consent to proceed for three minutes. Is there objection?

Mr. SNELL. Mr. Speaker, I shall have to object.

Mr. GREEN. Mr. Speaker, I withdraw the request.

THE CENSUS—APPORTIONMENT

Mr. DOWELL. Mr. Speaker, before the rule is called up this morning, I desire to reserve all points of order.

The SPEAKER. The Chair asks the gentleman to withhold that point until the conclusion of the special order for to-day.

Mr. DOWELL. Mr. Speaker, I do not want to be deprived of my rights in the matter.

FREIGHT RATES ON WHEAT FOR EXPORT

Mr. HOWARD. Mr. Speaker, I ask unanimous consent to make an announcement.

The SPEAKER. The gentleman from Nebraska asks unanimous consent to make an announcement. Is there objection?

There was no objection.

Mr. HOWARD. Mr. Speaker, I desire to announce, following my practice of doing what I can to aid the President in accomplishing something for agriculture, that I have introduced this morning a joint resolution directing the Interstate Commerce Commission immediately to put in effect the same export railroad freight rates on wheat that the commission has granted to Steel Trust on steel shipments for export.

I make this announcement knowing that we have not organized our Committee on Interstate and Foreign Commerce, but I am going very soon to ask unanimous consent that the Interstate Commerce Committee be permitted to become alive for the purpose of considering the resolution.

THE TARIFF

Mr. LOZIER. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. LOZIER. The United States Daily and a number of other papers, including the Associated Press, has made a statement from the Secretary of State, Mr. Stimson, that he has received certain official protests from 13 nations in regard to our tariff policy and the tariff bill now pending in this Congress, with a further statement from Secretary Stimson to the effect that he has submitted those reports to Congress.

I inquired of the Clerk of the House, who tells me he has no knowledge of any such reports. In view of the fact that they may indicate reprisals or retaliatory tariff laws which would inure against the agricultural products of the Middle West, I make the inquiry whether or not the Secretary of State has transmitted to the Congress these official documents, and if so, are they available?

The SPEAKER. The Chair does not think that is a parliamentary inquiry.

Under the order of the House, the Chair recognizes the gentleman from New York [Mr. LAGUARDIA] for 25 minutes.

PROHIBITION ENFORCEMENT AT THE CANADIAN BORDER

Mr. LAGUARDIA. Mr. Speaker, I regret exceedingly to take up the time of the House at this time, but when I made my request for time it was not anticipated that the reapportionment bill would be here for consideration to-day. I would waive this time were it not for the fact that statements have been made on the floor of the House which reflect on the sincerity and good will of the Government of the Dominion of Canada in its relations to the United States and the United States Government.

I have here what corresponds to the CONGRESSIONAL RECORD of the Canadian House of Commons of May 21, 1929, in which the matter was fully discussed.

The people of this country have had presented to them but one side of the Canadian-American prohibition question. From reports that have been sent out and from the speech made by the Hon. GRANT HUDSON, of Michigan, it would appear that Canada is not cooperating with the United States. That is not so. To the contrary, Canada has done more in helping the enforcement of prohibition in the United States than the Government of the United States has been able to do. The present demands made on the Canadian Government is nothing but a confession of weakness on the part of the United States Government and an example of the complete failure of prohibition, yet the Government of the United States has the audacity to ask the foreign country to do that which apparently it has been unable to do within its own borders.

Five years ago the United States asked the cooperation of Great Britain and Canada and obtained generous concessions which were stipulated in the treaty of 1924. Under this treaty the Canadian Government agreed entirely and generously to inform the United States of every clearance of vessels containing liquor destined to the United States. This provision the Canadian Government has faithfully fulfilled. The official communications from the United States Government and the representations made by the United States delegate at the conference of January 8, 1929, frankly admit that the Canadian Government and its officials have lived up to every requirement of the treaty of 1924. Now, the United States Government asks the Canadian Government to change its law, to make that which is now lawful in Canada a crime, and to deny clearance to vessels containing liquor bound for the United States, and even to prevent deliveries of liquor from distilleries and warehouses if such liquor is eventually to find its way into the United States. Such a far-fetched request of asking a foreign government to enact laws in order to make unlawful that which in their country is lawful in order to assist the enforcement of a local law has never been previously recorded in the history of the world.

Mr. HUDSON. Mr. Speaker, I understood the gentleman wants to quote the facts. They give the license number of the ships, but not the names.

Mr. LAGUARDIA. I will quote from the statement made by the delegation representing the United States at the conference held at Ottawa on January 29, in which they said that they concede and admit and appreciate the fact that the Canadian Government have fulfilled every single solitary requirement of the treaty of 1924.

Mr. HUDSON. At that meeting did they not request that they give the license number, rather than the name, that carried no significance?

Mr. LAGUARDIA. I will read the statement made by the Hon. William D. Euler, Administrator of the National Revenue of Canada.

A great deal has been said by the supporters of prohibition in criticizing the Canadian officials. Some statements have been made on the floor of the House insinuating that the Canadian Government was not fully cooperating with us and was not doing all that it could to assist the United States in enforcing the prohibition law. Personally, I do not know of any principle of international law or any requirements of comity which requires one nation to assist in the enforcement of a purely local, domestic law of another nation. Prohibition has created a great many strange situations, and if the success of prohibition requires the United States to demand the change of any local and domestic laws in foreign countries, that is just another of the freaks of prohibition which adds to prove the entire impossibility of its enforcement. I know of no better reply to the criticism directed against the Canadian Government and the insinuations hurled than to read the statement of the Hon. William D. Euler, who is the Minister of National Revenue of Canada. This statement was made to the Canadian House of Commons on May 21, 1929. The minister states clearly and concisely the method of liquor traffic and the actual situation. No one reading his statement can fail to see that the Canadian Government is doing not only all that it could reasonably be expected to do, but that it has met the United States the entire way and that any criticism is entirely unjust and unfounded. I now quote from the remarks of Mr. Euler:

Perhaps I might deal briefly with the subject in chronological order. As has been said, in 1924, a treaty was concluded with the United States for the suppression of smuggling. The chief obligation into which Canada entered was that we should report to the United States authorities whenever a clearance was granted by Canada customs officials to liquor-laden boats bound for the United States. A good many other things were discussed, but those who are familiar with the treaty will agree that that was the outstanding obligation in it. May I say in passing that the United States Government on several occasions has stated officially that the Canadian Government, through the Department of National Revenue, has faithfully carried out the obligations embodied in that treaty. But the United States has not been satisfied with the provisions of the treaty. With that I have no particular fault to find. Indeed, before the treaty was made, the United States requested that there should be inserted in it a provision that no clearances be granted to vessels of the kind mentioned, namely, vessels carrying liquor to United States shores. It was not so included in the treaty. We merely agreed to give notice of clearances that had been granted.

As has already been stated, in 1926 a request came from the United States Government for a further conference with the Canadian authorities, their purpose being to persuade the Canadian Government, if possible, to grant the very thing which they are again now asking.

That conference, held last January, was attended by certain officials of the United States Government and the Canadian Government. Suffice it to say that the outcome of the conference was merely this, that the Canadian officials expressed doubt as to the efficacy of the remedy proposed by the United States officials, and that the United States officials reasserted their conviction that the only way in which the difficulty could be met was by Canada passing such regulations or such laws as would prevent the export of liquor to the United States. I might say here, although I shall come to that point later, that merely to prohibit the granting of clearances will not remedy the situation at all. To make such a measure effective you would also have to forbid the release of liquor or beer from the distilleries and breweries.

I have spoken of the net result of the conference of last January. Following the conference, the officials made their reports to their respective governments. The report of the Canadian officials was received by the Government some months ago. After some consideration by the Government a communication was sent to the United States, suggesting a proposal, which has already been described by the honorable member for Winnipeg North Center, that it was thought would be of assistance to the United States, namely, to permit them to station their agents on Canadian docks from which liquor was being exported, so that they could observe and report to their own government and thereby stop the export to the United States. The United States authorities, in further correspondence, reverted to their former request and stated that the only thing that would serve their purpose would be for this Government to stop the issue of clearances. There the matter stands to-day.

In just a minute I am going to read the official communication making the generous offer to the Government of the United States referred to by Mr. Euler, in which the Canadian Government offered to permit officials of the United States to enter Canadian territory and to there do its police work. Mr. Euler continues:

When liquor is destined for the United States the excise is paid, and it is then just as legal to export that liquor as any other commodity—boots and shoes, furniture, iron and steel, or anything else that can legally be exported. So far as the department of national revenue is concerned, when the excise tax is paid, all its demands are satisfied and the liquor becomes exactly similar to any other commodity that might be manufactured in Canada. When these liquors are exported to the United States, however, it is necessary that the boat or conveyance carrying them to the United States obtain a clearance from the Canadian customs and fill out the necessary export papers. That is the whole procedure.

Most of the liquor that goes from Canada to the United States is shipped from what we may call the Windsor-Detroit front and the Lake Erie front. Some goes over the border from Lake Ontario, and some from western Canada and from Quebec, but not so very much. Most of it goes out from the area I have mentioned in the Province of Ontario, and some from the Province of Quebec. In every case clearances and export entries are necessary under our law.

I should like to correct a few misconceptions that are current throughout the country. It has been stated that the Government loses revenue by reason of the export of liquor to the United States. That is not the fact. Every bottle of liquor that leaves a distillery in Canada, no matter where it goes, pays the excise tax before it leaves the distillery, unless it is bona fide destined for some foreign country where bona fide landing certificates can be obtained, and in that case the shipment is made under bond. It is no longer true, as some people believe, that clearances to small boats are issued from our lake ports to countries like Cuba or Mexico. That practice was discontinued even before I took charge of the department. No boat which it is quite evident can not proceed to the destination designated in its papers can receive a clearance.

Reference was made to a clearance being refused to a boat at Bridgeburg going to Mexico because it was quite apparent that it could not proceed there, and a clearance being given when it was stated that the boat would go to Detroit. I do not see anything very peculiar in that, because in the one case the master of that boat gave a false declaration and in the other he did not. In the one case he was violating our customs laws, in the other he was not. I think it will surprise the members of the house when I say that when these boats clear from Windsor, we will say, for Detroit, or from Bridgeburg for Buffalo, they go to Detroit and go to Buffalo. They clear for a definite destination. If we know that they are clearing for some destination to which they are not actually going, they are violating our law and a penalty is applied.

The boats which are smuggling liquor are not violating our law, because it is not smuggling while they are in Canada. But when they deliver liquor in the United States they are violating American law, and the boats that are carrying this liquor to the United States are almost 100 per cent United States boats; they are not Canadian boats at all. Not only that, the men who are carrying the goods across are Americans practically 100 per cent, not Canadians. Here is a peculiarity in the respective laws of the two countries. In Canada every boat, no matter how small it is—and most of these goods are carried in small boats—must obtain clearance from a Canadian customs officer. In the United States—and these boats are owned in the United States, I should like the house to remember—boats under 5 tons need not obtain clearance and need not report when they come back. In Canada they must obtain clearance when they leave and report when they come back. While the United States are asking that we discontinue clearances to these boats—their own boats manned by their own people—they do not demand clearances themselves from those very boats.

Mr. HUDSON. Have you any statement or paper wherein the Government has ever asked any such thing? You are quoting the statements of members of the Canadian Parliament who asked the Canadian Government to do what you are referring to, and not the American Government. Furthermore, the gentleman knows that these delinquent customs officials on the border are languishing in the prisons and penitentiaries of this country, and the gentleman knows further that there is no civilized nation in the world that will ship contraband into another country.

Mr. LAGUARDIA. But the United States has made that request.

Mr. HUDSON. We have refused that.

Mr. LAGUARDIA. Certainly we have. We made that very request to which the Canadian Minister of National Revenue refers.

Imagine if a foreign country should request the United States to deny clearance to a ship carrying a cargo which was lawful according to our law.

Mr. HUDSON. We have refused to ship munitions of war to Mexico.

Mr. LAGUARDIA. We have taken just the opposite stand on contraband of war.

Mr. BEEDY. Will the gentleman yield?

Mr. LAGUARDIA. Yes.

Mr. BEEDY. Will the gentleman now answer the question which the gentleman from Michigan propounded but did not allow the gentleman to answer? Can the gentleman answer his question as to whether he has anything in writing, from official sources, to show that we have officially made any such demands on Canada as the gentleman is now claiming?

Mr. LAGUARDIA. Certainly. I have it right here.

Mr. BEEDY. What is it. The gentleman did not answer the question asked by the gentleman from Michigan.

Mr. LAGUARDIA. We requested——

Mr. BEEDY. Who requested?

Mr. LAGUARDIA. The United States, at a conference held in Ottawa in January, 1929, and previous thereto in many official communications.

Mr. BEEDY. Tell us what you are reading from and let us get the answer.

Mr. LAGUARDIA. I am reading from what any diligent Member of Congress can obtain, the complete summary of correspondence between the Governments of Canada and United States on the subject of commercial smuggling, issued by our Department of State.

Mr. BEEDY. The gentleman does not have to show it to me. Just state it.

Mr. HUDSON. The gentleman is simply quoting statements made by members of the Canadian Parliament, and that is what he has been quoting.

Mr. BEEDY. Let him answer your question.

Mr. HUDSON. He can not.

Mr. LAGUARDIA. Just be easy, because it is all going into the RECORD. There is nothing to get excited about. It is a matter of official record. Here is the document from the Department of State, and I will quote from it and from the report of the United States and Canadian delegates who attended the Ottawa conference in January of this year.

The specific request of the United States was, and I state it on my responsibility as a Member of the House and I will put it in the RECORD, that we desired the Canadian Government to change their laws by making it unlawful to give clearance to any vessel containing liquor, destined for the United States, and Canada refused to do it.

Mr. HUDSON. The gentleman is quoting statements by members of the Canadian Parliament.

Mr. LAGUARDIA. I am not. I am quoting a statement from the member representing the Department of State.

Mr. HUDSON. We asked the Canadian Government to give the license numbers and not such names as "Rat," "Black Cat," and so forth.

Mr. LAGUARDIA. That is absolutely not so. I took this up with the Department of State last Friday and Saturday. I conferred with Mr. De Wolf, who was one of the delegates from the Department of State, and the specific request—let me

state to the gentleman from Maine, who is sufficiently calm to listen to an answer—was that Canada refuse clearance to vessels bound for the United States and carrying liquor, and that required a change in existing Canadian law. Vessels carrying liquor may get clearance, which is now lawful, so to comply with this request it would be necessary to amend the laws of the Dominion of Canada. And that is right here.

Mr. BEEDY. I thank the gentleman for his reference to my calmness. I think we would get ahead much faster here if we were all calm. I want to make it clear as a matter of record that the question asked by the gentleman from Michigan has not yet been answered.

Mr. LAGUARDIA. Oh, yes it is.

The United States Government appointed the following officials to take part in the conference:

Admiral F. C. Billard, Commandant United States Coast Guard, head of group; James M. Doran, Commissioner of Prohibition, Treasury Department; E. W. Camp, Commissioner of Customs; Ferdinand L. Mayer, counsellor of United States Legation, Ottawa; Irving N. Linnell, United States consul general at Ottawa; Francis Colt de Wolf, assistant to Solicitor, State Department; Harry J. Anslinger, liaison office between State and Treasury Departments; Arthur W. Henderson, special assistant to the Attorney General; Lynn W. Meekins, commercial attaché at Ottawa; F. J. Murphy, Elmer J. Lewis, Treasury Department, technical assistants; Miss Clara Borjes, State Department, secretary.

Mr. BEEDY. The gentleman has read the names of certain gentlemen who he says represented the United States in a conference at Ottawa, but he has not read the official demands which he himself states were made by this country upon Canada. The gentleman has simply given his interpretation of those demands.

Mr. LAGUARDIA. Not at all. I have 25 minutes, with no chance of having my time extended, and does the gentleman want me to put in now 200 pages of the minutes of the conference?

Mr. BEEDY. No; but I think the gentleman should answer the question asked by the gentleman from Michigan. I am sure the gentleman is keen enough to find a paragraph in all those pages which would answer the question, and he can insert the full proceedings in the RECORD.

Mr. LAGUARDIA. And that will be done.

Mr. BEEDY. But up to the present time the gentleman has not done it.

Mr. LAGUARDIA. Now to answer the inquiry of the gentleman from Maine and the gentleman from Michigan, I read from a Summary of Correspondence Between the Government of Canada and the United States on the Subject of Commercial Smuggling Across the International Border:

The Secretary of State pointed out that as the result of the consideration which had been given to these subjects since the conventions were signed, it would seem to be desirable to make further provision for restricting and suppressing illicit smuggling operations, particularly in view of the fact that ships with cargoes of liquor on board were being cleared from Canadian ports for places in the United States when it was well known that the importation of such cargoes into the United States is prohibited by its laws. He expressed the hope that it would be found possible to take measures whereby clearances of ships with cargoes of liquor destined for the United States might be refused by the Canadian authorities, since it is evident when such clearances are requested that the object of the expedition is unlawful. He also stated that it would be helpful if provision might be made for extradition between the United States and Canada of persons guilty of violating the customs laws of either Government and seeking refuge within the territory of the other.

On January 21, 1929, Admiral Billard, the head of the American delegation, submitted his report of the conference to the Secretary of State and I read from the admiral's report:

The American delegation explained to the Canadians the importance of the Canadian Government's discontinuing the existing practice of clearing liquor direct from Canadian to American ports, and thus refusing to allow its instrumentalities to be used by persons engaged in breaking the laws of this country. They outlined what is being done in the United States for the enforcement of prohibition and pointed out the physical impossibility of controlling the movement of small speedy craft across water only a mile in width. They asked the Canadian delegation to report to its Government that the opinion of the United States Government is that nothing short of the discontinuance of the existing practice of issuing clearances or other official documents permitting the exportation from Canada to the United States of goods, the importation of which into the United States is illegal, would be of material assistance to the United States in dealing with the problem of smuggling, or would be of material assistance in preventing further development of unfavorable conditions along the border, which affect both countries alike.

These statements are sufficient to answer fully the doubt raised by the gentlemen from Maine and Michigan.

The representations made by the United States delegation at the conference with officials of the Candian Government which met at the Department of National Revenue in Ottawa on Tuesday, January 8, 1929, and held three subsequent sessions, are briefly as follows:

United States representatives stated that they desired to bring to the attention of the Canadian authorities the difficulties created by large importations of liquor from Canada into the United States which, according to Canadian official statistics, (1) the export of liquor to the United States for the year ending March 31, 1928, amounted in duty paid value to over $18,000,000; (2) contrary to statements appearing in the press, the United States officials were seriously attempting to solve the liquor-smuggling problem; (3) in the solution of the problem the cooperation afforded by the Canadian authorities under the treaty of June, 1924, proved ineffective. The United States representatives emphasized the fact that Canada had fully and faithfully discharged her obligations under the treaty and that failure to curb the smuggling of liquor was in no way attributed to any failure on the part of the Canadian officials to perform their duties. The facts remained, however, that since the treaty went into effect and between 1926 and 1928 the shipments of liquor into the United States had increased. If vessels were caught, the information given as to clearance was frequently not sufficient to permit identification. If cases were taken to court, great difficulty was experienced in obtaining witnesses and in securing favorable verdicts. (Surely this is no fault of the Canadian officials and United States should not complain and seek a change in the domestic laws of a foreign country because we can not convict violators of our own laws.) (4) The solution of the problem, therefore, appeared to be to ask the Canadian authorities to stop the traffic from the Canadian side. The proposal meant that each country should refuse to allow its instrumentalities to be used by persons engaged in breaking the laws of the other country. This remedy could be afforded by treaty amendment to the following effect or by corresponding legislative or administrative action:

The high contracting parties agree that clearances of shipments of merchandise by water, air, or land from any of the ports of either country to a port of entrance of the other country shall be denied if such shipments comprise articles the introduction of which is prohibited or restricted for whatever cause in the country to which such shipment is destined; provided, however, that such clearance shall not be denied on shipments or restricted merchandise when there has been complete compliance with the conditions or laws of both countries.

It was made clear, however, in subsequent discussion that in addition to refusal of clearance the United States representatives considered it would be necessary, in order to check the flow, for the Canadian authorities to take steps to prevent the release from distilleries of duty-paid spirits for export to the United States.

This briefly is the demand of the United States on Canada. I have summarized the proposals and representations of the United States delegates for the reason that it boils itself down to two propositions. First, for the Canadian Government to prohibit the exportation of liquor which is legal in its country; and, second, to even prohibit the sale of liquor from its distilleries if it is suspected that this liquor is to come into the United States.

It is most unseeming that we ask the Canadian Government to do that which we have been unable to do ourselves. After writing into the Constitution of the United States a provision against the manufacture, sale, and transportation of liquor, after enacting a law to enforce that particular provision of the Constitution, after appropriating millions and millions of dollars for the enforcement of that law, we stand on the American side of the Canadian border and admit failure to capture the vessels or to detect the smuggling of liquor and then have the effrontery to ask a foreign government where the sale, manufacture, and transportation of liquor is lawful to change their laws and to enforce our laws for us and to do something which we have been unable to do; that is, to prevent the importation of liquor into the United States created by the demand for liquor of our own people.

Simply asking for the change of law of a foreign government in order to enforce prohibition in our own country may, perhaps, at first reading not convey what such a request means. Not only do we ask the Canadian Government to pass a law con-

trary to its own customs but such a change would mean that the Canadian Government would have to do the policing for us. Such a change in Canadian law would impose additional burdens on the Canadian Government and the people of Canada, the people who are the taxpayers of Canada. What right have we to impose on the taxpayers of Canada additional burdens—brought about by our prohibition—for something which we have been unable to do and which our taxpayers are protesting against? In asking Canada to change its law, to make unlawful the clearance of vessels carrying liquor to the United States, to prevent the delivery of liquor destined to the United States from the distilleries and warehouses, is asking Canada to assume additional police functions for us. Such a law would entail supervision and enforcement. Canada would be required then to have additional men to watch the deliveries of liquor made unlawful by a law passed at our request, would have to make arrests and bring to trial and then pay for the cost of keeping these lawbreakers in jail, all involving a great deal of effort and enormous expenses. All this for the sole purpose of helping the United States enforce a law which apparently a majority of the people of this country do not want. Make Canada pay because Americans refuse to respect their own laws and demand liquor. Such an absurd, extreme, unfair proposition was never made by one country on another in the history of the world.

Quite contrary to what the gentleman from Michigan [Mr. HUDSON] said, the Canadian officials have been not only generous but they have been most forbearing, patient, and have displayed an extraordinary amount of good will toward the people of the United States. In every proposition made by the United States to Canada on this question of prohibition the Canadian Government has not only met the United States half way but has met the United States nine-tenths of the way.

I can well imagine the protest in this House and the indignation if the reverse conditions were true, if Canada had complete prohibition and the United States had no prohibition. What we would say if Canada asked us to write a law making it a crime for a lawful sale to be made if the liquor was destined to go to Canada. Why, gentlemen, the Canadians in their sincerity, in their desire to cooperate with the United States, have made a most generous offer to this country. They have practically said, "We can not do the policing for you, we can not make unlawful something that is lawful in our country in order to meet a situation in your country." They politely say, "apparently there is a great demand for liquor in the United States judging from the large amount that goes into the country," and then the Canadian Government said to the Government of the United States—

> We will permit you to police right in our own borders. We are willing to surrender an important part of our sovereignty and permit you to send your agents into Canada. Let them watch every clearance, let them watch every loading, then your own officials can communicate to their headquarters on the United States side, and the minute that this liquor comes over into your country you can proceed according to your own law.

Mark you, no crime has been committed until this liquor reaches American territory. The Canadian Government generously offered to permit the United States officials to go into Canada and to get the information themselves. This is after the Canadian officials agreed in the treaty of 1924 to communicate to the United States every clearance of vessels containing liquor for the United States. Then the United States said, "it is not accurate and it is not enough," and Canada replied, "come over, send your own police officers, and get it yourself." This is so important that I want to read the official communication to the United States Government of the Canadian Government making this offer, an exception to every known precedent in international law and almost amounting to surrender of its sovereignty in its own territory. In a communication from the Secretary of State for External Affairs of the Dominion of Canada on March 15, 1929, addressed to the American chargé d'affaires, American Embassy at Ottawa, this offer was officially and formally made. Let me read this letter:

> SIR: Referring to your note No. 272 of the 27th November, 1928, and to the discussion which took place at the conference of officials on the subject of commercial smuggling held in Ottawa on the 7th–10th of January, 1929, I now have the honor to state that the Canadian Government has given careful consideration to all aspects of the existing situation, and has examined the report of the Canadian representatives to the conference, a copy of which is herewith inclosed for the information of your Government.
>
> As you will observe from an examination of the report, the conference devoted its attention almost exclusively to discussion of the suggestion made by the United States representatives that the Canadian Government, in addition to the numerous steps already taken, which facilitates the enforcement of the United States laws against the importation of liquor, and which are summarized in the report, should prohibit the export of intoxicating liquors to the United States. Without making at the present time a final decision on this proposal, the Canadian Government is in accord with the opinion expressed by the Canadian representatives that the problem of enforcement facing United States officials, particularly on the Detroit and Niagara border, might in large measure be solved by a further extension of the system of furnishing information as to shipments of liquor provided by the convention of June, 1924. It will be noted from the report that instructions have been issued to Canadian customs officials to provide more detailed and exact information as to shipments, and that more recently steps have been taken to reduce the number of export docks, which will facilitate securing more complete and accurate data. To cooperate with and assist further the Government of the United States in the effective enforcement of its law, the Canadian Government is prepared to permit United States officers to be stationed on the Canadian side of the border, at ports of clearance to be determined, in order to enable the United States officials themselves to transmit immediately to the appropriate authorities in the United States information to be furnished by the Canadian customs officials as clearances are obtained as to the clearance of all vessels for the United States carrying liquor cargoes.
>
> Any further suggestions which would make for increased speed, accuracy, or precision in the conveyance of information to the appropriate United States officials will be sympathetically considered.
>
> Accept, sir, the renewed assurances of my highest consideration.
>
> W. L. MACKENZIE KING,
> *Secretary of State for External Affairs.*

This offer was refused by the United States, and we have the audacity to insist upon our demands of dictating to a sovereign nation to change its law in order to help us enforce a law which we have been unable to enforce in the last 10 years. I want to read the summary of representations made by the Canadian delegation at the conference held in Ottawa, Canada, which forms part of the official report of the delegates to their respective Governments. I read this in full at the risk of time of the House, because it is of the utmost importance. It shows the patience of the Canadian representatives; it proves their desire to cooperate with us; it shows great diplomatic skill in not telling the United States representatives that enforcement should begin at home and not in a foreign country.

I now read the report:

SUMMARY OF REPRESENTATIONS MADE BY THE CANADIAN DELEGATION

1. The difficulty as to liquor smuggling into the United States was, of course, not of Canada's making, but was incidental to the fact that the United States was following a different method of solving the problem of the control of intoxicating liquors. The United States had adopted a system of national prohibition, whereas seven of the nine Provinces of Canada have adopted a system of legalized sale for beverage purposes under provincial governmental control. The problem would practically disappear if the United States adopted a system of legalized sale for beverage purposes or if the Canadian Provinces adopted complete prohibition. So long as the two countries maintained their different domestic policies it was inevitable that along the 3,000-mile boundary, with a legal supply on one side and an illegal but persistent demand on the other, smuggling would remain, though it might be shifted or lessened. At present the sale of liquor for beverage purposes in seven Provinces of Canada, when conducted in accordance with provincial and federal regulations, was entirely legal, and the traffic was illegal only under United States laws and only when the shipments crossed the border into the United States.

2. It was considered desirable, in order that the problem might be seen in its proper perspective, to recall the fact that as far as could be gathered from estimates of United States authorities, the amount of liquor smuggled from Canada—while substantial and publicly recorded—was apparently a very small fraction of the total supply available in the United States. General Andrews, when in charge of prohibition enforcement in the United States in 1926, had estimated that the liquor smuggled into the United States from all countries did not exceed more than 5 or 10 per cent of the total supply. A recent unofficial estimate by Maj. Chester P. Mills, formerly in charge of prohibition enforcement in New York City, was to the effect that 98 per cent of the supply in the United States was produced within its own borders. Precision in such estimates was from the nature of things impossible, but even assuming that the Canadian supply was double the estimate, it still remained a minor factor, so far as quantity was concerned. This was a consideration which it was necessary to take into account in deciding the extent of the measures which Canada might consider it reasonable to adopt in aiding the United States to solve its problem.

3. The question was raised whether further steps could not be taken by the United States authorities for the better control of the traffic. It was pointed out that nearly 100 per cent of the boats carrying liquor

and of the people engaged in the traffic were from the United States and that the navigation laws of the United States appeared to call for the registering with the collector of the district of all United States vessels before engaging in foreign trade, and also for making oath as to ownership upon return from a foreign port. It was stated by the United States representatives in reply that the present United States law regarding registration, enrollment, or licensing does not apply to vessels under 5 tons, which vessels are required to be officially numbered only, and that proceedings can not be taken against them if they return to United States ports without cargo. It was suggested to the United States members that if every vessel irrespective of size and whether carrying cargo or not, were obliged by law to report when leaving for a foreign port, and also when returning, under heavy penalty for failure to do so, as is the requirement in Canada, there would be a control over the movements of such vessels which is now lacking. The United States representatives considered that to extend that requirement to small boats would involve undesirable interference with legitimate intercourse between the two countries. It was, however, stated in reply that this did not accord with Canadian experience.

Attention was also called by the Canadian representatives to the frequency of shipments in daylight along the Detroit and Niagara frontiers within sight of both shores. Photographs had been taken showing boats with liquor cargoes crossing the river in open daylight.

4. The steps already taken by Canada which had the effect of assisting the United States control of smuggling were, it was stated, much more extensive than was generally recognized.

(a) The treaty of January, 1924, between His Majesty and the President of the United States of America, permitting search and seizure of vessels attempting to smuggle liquor into the United States outside territorial waters and within an hour's distance from shore, was frequently referred to as a treaty between Great Britain and the United States alone. It was, in fact, a treaty applying to all parts of the British Empire; the conclusion of such a treaty had been strongly supported by Canadian representatives in London in 1923, and the treaty when concluded had been approved by the Canadian Parliament. It was recognized that this treaty had been highly effective in preventing smuggling from the high seas, and, in fact, one reason for the concentration of the traffic at present on the land border was the increased effectiveness of the control at sea. Reference was made to complaints received on various occasions of a tendency of the enforcing authorities to go beyond the letter and spirit of the provisions of the treaty.

(b) The terms of the treaty of June 6, 1924, between Canada and the United States, and the regulations established thereunder, including variations as requested by the United States authorities, have been carried out as fully as possible. Where, in a few instances, reports have been received of failure of Canadian officers in this regard, the officers have been promptly disciplined and the practice corrected.

(c) By chapter 50 of the statutes of 1927, the requirement of a bond in double the duties of importation on exportations of liquor from Canadian customs warehouses (subject to the production of foreign landing certificates) was extended to cover the cargoes of vessels coming into Canadian ports for provision, shelter, or repairs and afterwards proceeding to sea. Such vessels were also put to the expense while in port of paying for a customs officer on board. As a consequence vessels laden with liquor intended probably for United States consumption were no longer able to establish bases in Nova Scotia or other Canadian ports. The result was an enormous reduction in the difficulty of United States authorities in combating liquor smuggling by sea in the North Atlantic.

(d) At the date of the treaty of 1924 there were established in Canada, principally in the Provinces of British Columbia and Nova Scotia, a number of customs warehouses in which imported liquors might be stored in bond pending entry ex-warehouse in bond for export or ex-warehouse upon payment of duty either for home consumption or for export. If exported in bond, the bond of a guaranty company was required for production of foreign landing certificates. If exported after payment of duty no bond and no proof of foreign landing were required. Early in 1928 the Minister of National Revenue withdrew the privilege granted to proprietors of such warehouses of further warehousing goods therein. No further importation of liquors for such warehouses is taking place or can take place, and stocks in warehouses at the date the privilege was withdrawn are required to be cleared not later than the 11th of June, 1930, and a number of these warehouses have already been closed. As a major portion of the liquors cleared from these warehouses after payment of duty were exported, the discontinuance of the warehouses will stop one source of smuggling into the United States. It was noted that there will still exist customs bonded warehouses for storage of liquors imported by provincial authorities.

(e) By the importation of intoxicating liquors act, chapter 31, of the statutes of 1928, the Canadian Parliament prohibited the importation of intoxicating liquor into Canada, with minor exceptions, unless consigned to His Majesty for the executive government or governmental agency which by the law of the Province is vested with the right of selling intoxicating liquor. One result of this will be to restrict transactions in liquor intended for smuggling into the United States.

(f) Heretofore, in localities such as the border from Lake Huron to Lake Erie, export has taken place from a considerable number of docks or places suiting the convenience of the exporters and consistent with compliance with customs requirements.

By recent arrangement the docks in the district under the port of Windsor and outports including Walkerville, Riverside, Ford, Windsor, Sandwich, and LaSalle, from which, and from which only, clearances will be granted, have been reduced from about 40 to 10. Arrangements are proceeding for similar limitation at Sarnia, Port Lambton, Sombra, Amherstburg, and Kingsville. This will facilitate the furnishing of more detailed information under the treaty to United States officers.

5. With regard to precedents afforded by other countries it was necessary to consider the whole situation as to each country, and not to compare the action taken by Canada with the action taken by all other countries collectively. While the steps taken by Canada were not identical with those taken by any other country, they covered, as set forth in the preceding summary, a wider range of cooperative effort than in any other case. It was also necessary to inquire in each case whether the circumstances were substantially similar. The fact that Norway penalized Norwegian vessels engaged in smuggling abroad was not pertinent to the situation on the Canada-United States border, as practically all the boats engaged in this latter traffic, as well as the nationals, belonged to the United States. In practically all the Baltic countries participating in the agreement of 1925 some form of sale of liquor was provided for under varying systems, and each country had the same direct interest in preventing smuggling into its own territory.

As regards the statement that Great Britain did not clear shipments of liquor to the United States, it was pointed out that while this information had been conveyed from official British sources to United States authorities some years ago, it was evidently erroneous. Inquiry had been made by cable during the conference as to the present practice in this respect and information had been received from the British Government that it was not the practice in that country for clearance to be refused to vessels carrying liquor to the United States, since the customs authorities had no power to refuse clearance to vessels whatever their destination. The agreement reached between the British and United States representatives at the conference held in London in 1926 did not include any provision for refusal of clearances.

6. It was not considered that refusal of clearances was a necessary consequence of the treaty of June, 1924. The treaty was indeed entitled "A treaty for the suppression of smuggling," but, obviously, by the means detailed in the text, that is, by exchange of information regarding shipments, the suppression being left to the country into which the goods were imported. A request for refusal of clearances had been made prior to the 1923 conference and considered when the treaty of 1924 was made. As to the inconsistency between granting clearances to United States points and refusing clearances to other countries on the ground that the cargoes were really destined for the United States, it was pointed out that the difference was that in one case the statements were false and that in the other they were presumably true, and the Canadian administration could not accept obviously false clearances. The Canadian regulations, moreover, placed a check on the practice of short-circuiting.

7. As regards commercial smuggling into Canada, it was stated that the Canadian authorities had succeeded in reducing it to a negligible quantity in the past two years by the establishment of a patrol service along the frontier at strategic points, and the operation of a special preventive force on the coast. Certain difficulties remained as to undervaluation, but smuggling on a commercial scale into Canada had almost disappeared and little complaint was made as to unfair competition. As regards liquor shipments, the danger of short-circuiting had been largely obviated by arrangements made between the federal and provincial authorities.

8. The opinion was expressed that the stopping of open shipments along the Niagara and Detroit border would simply result in the diffusion of the traffic along the whole border by road, rail, and unfrequented water routes. If the Canadian authorities sought to prevent the release of liquors for shipment or the clearance of vessels with such cargoes the result would be to increase greatly the expenditure falling upon Canada and responsibilities imposed upon Canadian officials, once the traffic which is now legal was made illegal. So far as the smuggling of Canadian liquor did continue, the blame for the nonenforcement would be shifted to Canadian shoulders.

9. The question was raised as to the effect of the comprehensive character of the proposed prohibition of export of any article whatever of which the importation was forbidden or restricted by the other country, which might be interpreted as covering a much wider range of articles than the liquors to which alone specific reference had been made in the discussion.

10. The United States Government had expressed its readiness to accede to a suggestion which had been made some years ago for the transportation of liquor for provincial government purposes through

United States territory up the Stikine River to interior points in British Columbia. Attention was also called by Canadian representatives to the possibility of providing for transportation for provincial governments and liquor commissions across the State of Maine by the Canadian Pacific Railway from one Canadian point to another, under due safeguard. The United States representatives considered that such a proposal would be reasonable.

11. The Canadian representatives made it clear that careful and sympathetic consideration would be given to any proposals of the United States delegation having as their object the improvement of the present system for the exchange of information under the terms of the treaty. By Memorandum No. 63, Supplement F, issued on the 30th of September, 1926, the following additional instructions were given to all Canadian collectors of customs and excise and others concerned in the enforcement of the treaty.

"When furnishing information with regard to vessels as provided in the above-named treaty and regulations thereon, you are instructed to have such information include as far as possible the following:

"1. Name of vessel.

"2. Nationality of vessel.

"3. Name and residence of master.

"4. Registry or license number of vessel.

"5. Kind of vessel.

"6. Description of the vessel sufficiently correct to enable its identification.

"7. Time of clearing."

It was felt by the Canadian representatives that the restriction in the number of export docks would enable the Canadian officials to afford still more detailed and precise information to the designated United States officials if the latter so desired. Such information, it was considered, would enable the United States authorities to deal effectively with offenders against their laws.

This report should not be closed without reference to the spirit of cordiality which characterized the meetings of the two delegations. The full and frank discussion enabled the representatives of each country not only to appreciate the difficulties facing the other country, but to secure information which would be of value in their own tasks of administration.

The foregoing summary of the proposals brought before the conference and the ensuing discussion is herewith respectfully submitted.

O. D. SKELTON, *Chairman.*
W. STUART EDWARDS.
F. W. COWAN.
WILLIAM IDE.
E. HAWKEN.
H. L. KEENLEYSIDE.
R. W. BREADNER.
GEORGE W. TAYLOR.
C. P. BLAIR.
C. H. L. SHARMAN.

OTTAWA, *February 7, 1929.*

Now, that is quoted from the minutes of the conference held at Ottawa in January of 1929, and to repeat it for the fourth time, we specifically asked them to change their laws in order to make these clearances, which are now lawful, unlawful.

Mr. HUDSON. Will the gentleman yield?

Mr. LAGUARDIA. Certainly.

Mr. HUDSON. The question that the gentleman from Maine has stated has been asked has not been answered.

Mr. LAGUARDIA. Yes; I have answered it. Get that clearly. I have answered it.

Mr. HUDSON. But the gentleman knows that very arrangement is in operation now with the British Government.

Mr. LAGUARDIA. It is not.

Mr. HUDSON. It is.

Mr. LAGUARDIA. It is not.

Mr. HUDSON. It is.

Mr. LAGUARDIA. It is not.

Mr. HUDSON. All right.

Mr. LAGUARDIA. The source of the gentleman's information has always been so one-sided that he would not take the other side of the question.

Mr. HUDSON. My source of information was the same as that to which the gentleman is now referring.

Mr. LAGUARDIA. Then the gentleman can not read.

Mr. HUDSON. Vessels clearing from the British Isles on the Atlantic coast do the same thing which has been asked of the Canadian Government.

Mr. LAGUARDIA. And Canadians have complied.

Mr. HUDSON. No; the Canadian officials have not.

Mr. LAGUARDIA. A complete report was made by the Canadian collector of customs at Bridgeburg. This report was read to the Canadian House of Commons by the Hon. William D. Euler on May 21, 1929. It is needless to say that it made a profound impression, as I am sure it will make upon the Members of this House. Surely, in the face of such conditions which have not been denied by the officials of the United States Government, we are in no position to complain of the cooperation extended by the Canadian Government or to make the unreasonable demands for a change in their law which we are now making. The honorable minister prefaced the reading of the collector's letter with a few remarks, showing actual conditions at one point in Canada in one day. From this the House can well determine the enormous amount of liquor traffic and the enormous amount of liquor imported from Canada, all of which I say would not take place if prohibition had the moral support of the American people and if millions and millions of American citizens did not demand liquor. This is what Mr. Euler said in this respect:

In the United States they demand clearance of boats of 5 tons and over. But the anomaly is in this: They now ask us to discontinue giving clearances to their own boats, which in most cases are less than 5 tons. They themselves do not require clearances of those boats. I would respectfully suggest that they would have considerably more control over their own boats, manned by their own people, if they would enact a law that those boats, no matter how small, should be obliged to obtain clearances when they leave their shore and report when they come back, the same as we require in Canada. That would give them some control.

The chief export points are the Windsor district and the Bridgeburg district. I have said something which may appear a criticism of the United States. I have no desire to be offensive, but I think there are some facts I should place before the House in view of the statements made that we are not dealing in a friendly way with our neighbor to the south. It has been stated that these boats go across at night. That is not entirely true. I took the trouble last fall to go down to Windsor. I was offered safe conduct by a liquor exporter and went out on a launch on the Detroit River. I could see the United States customs office on the other shore, and I could also see that it was not difficult to detect any boats that left the Canadian shore to go to the American side. While in Windsor I got into conversation with a man engaged in the business of exporting liquor. I asked him, "Do you cross in the daytime?" He answered, "Yes; quite often." I said, "How is it they do not get you?" He replied with a smile, "It just happens that they are not there when we go across."

Our inspector went to Windsor not so very long ago. He did not select any special day. While there, on January 14, he observed the following vessels cross the river to Detroit in daylight with cargoes of liquor:

Ben, J. King, master; 10 quarter barrels beer, 11 cases whisky.

Rat, J. Sales, master; 24 cases whisky, 5 cases wine, 1 case brandy.

Bat, A. Jacks, master; 19 cases whisky, 1 case wine.

Rabb—

Rabbi, I. Straight, master; 5 half barrels beer, 8 cases whisky.

Bird, J. Bloom, master; 18 cases whisky, 8 cases bourbon, 1 case Scotch whisky.

Bar, J. Peters, master; 13 cases whisky, 4 cases bourbon, 3 cases brandy.

That was in one day.

May I add that it was also from only one point?—

Those boats went over in broad daylight. I leave members to draw their own inferences from that state of affairs. From the Bridgeburg district I have a report, in reply to an inquiry, by the collector at Bridgeburg, Ontario, written on April 11 of last year, and directed to the Commissioner of Customs:

"DEAR MR. BREADNER: I wish to give you a short account of the rum running at this port and our procedure in the matter.

"There are about 12 boats plying between here and Buffalo, N. Y., the river at this point being about half a mile wide. Some days we only have two or three boats out"—

I do not think he should say "we" have—

"they have only two or three boats out, and on other days the whole fleet will make a trip.

"The liquor and ale are brought from the distillery and brewery by truck, arriving here about 2 o'clock in the afternoon. The boats are all loaded and clearance granted about 5 p. m., and they are compelled to leave by 6 p. m. Some of these boats carry from 800 to 1,000 cases, and on their arrival on the American side it takes from two to three hours to unload them. No effort as far as we can see is made by the United States authorities to seize any of these boats, as the United States customs are always notified by us an hour or two before the boats leave, and occasionally we notify them as the boats are leaving, giving them the names of the boats and the quantity of liquor or ale on board. We have had high customs officials from Buffalo, special agents, and officers connected with the Coast Guard come over to the Canadian side, watch these boats load and pull out. It is a well-known fact that some of these boats land within a few hundred yards of the United States customs office at the foot of Ferry Street and unload without being disturbed.

"Some few weeks ago no doubt you saw in the press where it was stated that a truck had drawn out on the Peace Bridge and unloaded the ale down on the bank on the American side by tying a rope around the cases and lowering them to the river bank. As a matter of fact, this ale was unloaded from one of the rum boats plying between here and

Buffalo, right under the Peace Bridge, within a few hundred yards of the customhouse.

"Our officers who check these boats out were informed by one of the rum runners that they had no trouble in landing their cargo, as they were assisted by the officers of the dry squad on the American side, and it would appear that such must be the case, when seven or eight boats will leave here and land their cargoes, sometimes taking them three hours to unload, without any casualties.

"These boats are loaded directly opposite from the United States customs office at Black Rock. You can stand by the window in that office and look across and see every case that is loaded on the Canadian side. I know that, if conditions were reversed, we would have all these boats tied up in less than a week, and if the officers on the American side wished to put a stop to this business they could do it in about the same length of time."

AN HONORABLE MEMBER. Whose report is that?

Mr. EULER. That is signed by F. T. Pattison, collector of national revenue at Bridgeburg, Ontario. I am reading this, Mr. Speaker, not for the purpose of making a criticism against the United States officials—I do not question the good faith of the men at the top—but I think it is at least a fair reason for considering whether the Canadian Government would be justified in going to what I think I can show would be a heavy expense if this law were enacted that is being asked for, in face of the fact that the United States authorities are making no very earnest effort to do it themselves.

Miss MACPHAIL. I should like to ask the minister a question which it will not take him a moment to answer. Were not these facts known at the time the special committee and the royal commission made their report? Did they not then know that some, at least, of the United States officials were not trying to enforce their own laws?

Mr. EULER. My answer would be, I do not know. But I could hardly understand why they would fail to have knowledge of these facts.

AN HONORABLE MEMBER. Why did we indorse it?

Mr. EULER. That indorsation was given in 1926, as I understand it, and if the house desires I will deal with that later if I have time, but I would prefer for the moment to go on with another phase of the matter.

It has been said—I think by the member for Winnipeg North Centre—that we have done absolutely nothing to assist the United States. I desire to cite some of the things we have done.

Mr. WOODSWORTH. I thought I gave the Government credit for having done something.

Mr. EULER. Perhaps I am accusing the honorable member wrongly, but I understood him to say that we had not done anything to assist the United States. The first thing we did was to agree to a treaty establishing the 12-mile limit, which has at times involved considerable difficulty to Canadian boats. That helped tremendously in stopping the importation of liquor from the Atlantic seaboard. We agreed to give information as to clearances and have faithfully carried out that agreement, as the United States has testified on more than one occasion. We insist on bonds of the kind I described some time ago, where boats laden with liquor come from across the ocean or from St. Pierre Miquelon, which is the center of the trade, and enter Halifax Harbor; at least they used to enter that harbor in stress or storm or from any other cause. They now must give a bond in the same way as the others that export to foreign countries. The result is that that business has stopped altogether, and the depots that were formed in Nova Scotia from which liquor was smuggled into the United States are no longer in existence. In addition to that we closed the export houses to which the honorable member for Winnipeg North Centre referred. There were in Canada so-called export houses—houses which imported liquor, stored it in these places in bond, and then exported it. I think it is true to say that perhaps 95 per cent of the liquor in these export-bond houses went to the United States. We have closed these and shut out that source of supply to the United States because this department agreed with the royal commission that these customs bonds served no useful purpose; and although it is quite true that the Dominion Government obtained considerable revenue from that source it was not taken into consideration at all.

We passed last session the intoxicating liquors act; the Minister of Justice [Mr. Lapointe] piloted that bill through the house. The result is that now, with a few exceptions, no other than the local control authorities in any Province may import liquor into that Province. That also has prevented the accumulation of liquor which later found its way into the United States. We have limited in Ontario, where most of the export business is done, the number of docks from which liquor may be exported.

Mr. STEVENS. How many are there now?

Mr. EULER. Windsor district was the most notorious, if I may use that word. I do not know the exact number, but there were about 50 places from which liquor went out. There are now 10.

Mr. MANION. Are 10 enough to supply the demand?

Gentlemen, these are facts; these are official records. As I stated before, I was reading from the parliamentary record of the Canadian House of Commons of May 21, 1929. In the face of all of this, how dare we ask Canada for more concessions and to change her law when conditions are such that our own law is violated under our own nose? As I have said so many times, prohibition simply can not be enforced.

Is it not humiliating to hear the figures and statistics quoted by the Canadian Minister of National Revenue?

Dry America consumed more Canadian liquor than is consumed in wet Canada. The excise tax on liquor manufactured in Canada last year was $12,400,000. Of the amount, $7,800,000 was duty paid on spirits exported to the United States and only $4,600,000 on domestic spirits consumed in Canada. This is all tax-paid liquor lawfully manufactured in Canada but unlawfully consumed in the United States. The duty is $9 a gallon, and of this amount duly recorded as coming to the United States are 866,666 gallons. However, according to the figures submitted to the Canadian House of Commons 1,800,000 gallons of liquor were exported from Canada, and of this amount 1,100,000 gallons were exported to the United States. In other words, all the wet countries where there are no prohibition laws, imported from Canada 700,000 gallons of liquor while dry United States with its prohibition imported 1,100,000 gallons. The difference in the tax of the $7,800,000 and the amount actually exported to the United States is explained by the fact that over 300,000 gallons were exported from indirect sources after the tax had been paid.

Mr. BEEDY. And how much of it went to New York State?

Mr. LAGUARDIA. Less, proportionately, than went to the great State of Maine. [Laughter.]

Mr. BEEDY. Now I am sure the gentleman will be courteous enough to yield to me.

Mr. LAGUARDIA. Yes.

Mr. BEEDY. Where does the gentleman get the facts on which he bases such an assertion? He has now made the statement that of the liquor exported from Canada less, proportionately, went to the State of New York than went to the State of Maine.

Mr. LAGUARDIA. Exactly.

Mr. BEEDY. Where does he get that information?

Mr. LAGUARDIA. When I went up into your great State.

Mr. BEEDY. Who told you about it?

Mr. LAGUARDIA. I saw it. [Laughter.] Why, there is no secret about it.

Mr. BEEDY. Where did the gentleman see it in my State?

Mr. LAGUARDIA. The gentleman does not want me to violate all laws of hospitality?

Mr. BEEDY. The gentleman has started something which I desire him to finish.

Mr. LAGUARDIA. The gentleman does not want to say that there is no liquor coming from Canada into Maine?

Mr. BEEDY. I know that men are arrested frequently for attempting to bring it across the border, and I know that others get across the border with it, but I am quite confident the gentleman has made a much exaggerated statement——

Mr. LAGUARDIA. Oh, no.

Mr. BEEDY (continuing). When he says that of the exports of liquor from Canada a greater proportion goes to the State of Maine than to New York.

Mr. LAGUARDIA. I saw it.

Mr. BEEDY. In the first place the gentleman does not tell us what the proportion is which he is considering. Is it based on population? Is it based on money or the number of men who stand up in public and advocate this wet idea——

Mr. LAGUARDIA. Or those that deny existing facts?

Mr. BEEDY. I still insist that the gentleman now owes it to me to give me the basis for the statement which he has made.

Mr. LAGUARDIA. Then let the gentleman investigate the facts in the best families of Maine.

Mr. BEEDY. I have found no such evidence as that to which the gentleman refers in the best families of Maine.

Mr. LAGUARDIA. I find that the use of liquor is universal throughout the country.

Mr. BEEDY. Well, I have not.

Mr. LAGUARDIA. And with its proximity to the Canadian border, I repeat now that there is an abundant supply of Canadian liquor coming from Canada into the State of Maine.

I do not believe the gentleman from Michigan [Mr. HUDSON] intended in any way to reflect upon the sincerity, good will, the good intentions, and the fine friendship of the Government of Canada and the people of Canada toward the Government of the United States and the American people. I believe that he overstated himself when he intimated that the statement of the Hon. William D. Euler, Minister of National Revenue, would indicate that he was giving moral support to lawbreakers. That is not the fact. I think I voice the sentiment of the American people who have gone into the facts in the face of the generous offer made by the Canadian Government, in view of our own inability

to enforce the law within our own borders when I say that we appreciate the generous attitude of the Canadian Government and that we will not permit the outcry, the feeble protests of any fanatic of this country in the despairing of seeing the entire breakdown and failure of prohibition, to create friction and bad blood between the people of Canada and the people of the United States, between the Government of Canada and our own Government. We have had many more serious differences with Canada—the fishery question, the seal question, boundary disputes, all of them have been amicably settled. We will not permit prohibition and the fanatic supporters of prohibition to disturb the friendship between these two Governments which has existed for over 100 years. This friendliness is demonstrated by the living example that on 3,000 miles of border there is not a fort or an armed vessel, and so we will not permit prohibition to destroy this friendship and the understanding between the people of Canada and the people of America.

We say to the people of Canada, we admit our failure to enforce prohibition, we admit that it is not enforcible, we apologize for the critics who are trying to blame the Canadian Government, pay no attention to them, we will solve this problem ourselves at home in our own way, but the friendship between Canada and the United States must continue forever. [Applause.]

The SPEAKER pro tempore. The time of the gentleman from New York has expired.

CENSUS—APPORTIONMENT

Mr. SNELL. Mr. Speaker, I call up a privileged resolution from the Committee on Rules (H. Res. 49).

The SPEAKER. The gentleman from New York offers a resolution, which the Clerk will report.

The Clerk read as follows:

House Resolution 49

Resolved, That immediately upon the adoption of this resolution the House shall resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill S. 312, "A bill to provide for the fifteenth and subsequent decennial censuses and to provide for apportionment of Representatives in Congress," now on the Speaker's table.

That general debate shall be confined to the bill and shall continue not to exceed four hours, to be equally divided and controlled by the gentleman from Connecticut, Mr. FENN, and the gentleman from Mississippi, Mr. RANKIN. At the conclusion of general debate the bill shall be read for amendment under the 5-minute rule, whereupon the bill shall be reported back to the House with such amendments as have been agreed to, and the previous question shall be considered as ordered on the bill and all amendments thereto to final passage without intervening motion except one motion to recommit.

Mr. DOWELL. Mr. Speaker, I reserved a point of order until I could propound a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. DOWELL. It is the parliamentary inquiry I submitted on Friday last, when the rule was presented. The Committee on the Census not having been organized and this bill not having been considered by the House, and not having been considered by any committee of the House, what opportunity will there be for a motion to recommit to a committee at the proper time under the rules of the House and under the present rule presented by the rules committee?

Mr. RANKIN. Mr. Speaker, will the gentleman yield?

Mr. SNELL. The gentleman is making a parliamentary inquiry.

Mr. RANKIN. I ask if the gentleman will yield to me for a question or a suggestion?

Mr. DOWELL. I yield to the gentleman.

Mr. RANKIN. Under the present rules the Speaker has recognized the existence or the nominal existence of the Committee on the Census. On May 9, 1929, the gentleman from New York [Mr. REED] introduced a bill (H. R. 2763) and the Speaker referred the bill to the Committee on the Census.

Mr. DOWELL. I can answer the gentleman's question by saying that the Speaker has no power to recognize any committee that has not been created.

Mr. RANKIN. I want to ask the gentleman if he does not think that if the Speaker has the power to recognize the Census Committee to the extent of referring a bill to it, that a motion to recommit to the Census Committee would be in order?

The SPEAKER. The Chair would like to interject this remark. While it is true that in a sense the Speaker has referred bills to various committees not in existence, it is a pure informality. The parliamentarian under the direction of the Speaker refers the bills to the committees that have jurisdiction of the subject matter. The bills are then delivered to the bill clerk, who numbers them and sends them to the Printing Office to be printed. The printed copies are then returned to the bill clerk to be by him delivered to the committee to which they were referred. In the present circumstance, all of the committees not being organized, the bill clerk retains the bill until the committees are organized. This practice is pursued in order to prevent confusion and as a mere method of orderly disposition of the bills introduced. It certainly does not mean that the bills are formally referred. They will not be so referred until the committees are organized.

Mr. DOWELL. As a matter of fact, Mr. Speaker, the Speaker could not by any construction recognize what does not actually exist, and the creation of the Committee on the Census can only be made through the House itself.

The SPEAKER. The Chair will state it is merely a way of disposing of the bills rather than to let them pile up in the Speaker's office, and it is purely informal.

Mr. DOWELL. So far as the reference is concerned; but here, Mr. Speaker, we have another proposition. A motion to recommit must comply with the rules of the House, and in complying with the rules of the House, in order that it may not be ruled out of order by a point of order being made against it, therefore it must be in strict compliance with the rules. This committee not having been created and not having any existence in fact, a point of order, it seems to me, would lie against a motion to recommit to a committee that has no legal existence.

The SPEAKER. The Chair is prepared to answer the question.

The situation, while somewhat unusual, it seems to the Chair, is very simple.

A motion to recommit with instructions to report forthwith is purely a formal motion. It does not mean that the committee is going to assemble and consider the question and formally report the bill—it is a pure formality. The Chair thinks under the present circumstances that it is in order to move to recommit the bill to any standing committee that is organized, or any select committee, or the Committee of the Whole House on the state of the Union, and there being no Census Committee in existence the Chair would hold that it is not in order to move to recommit the bill—provided such a motion is made—to the Committee on the Census, there being no such committee in existence. But it would be in order, the Chair thinks, to move to recommit the bill to the former members, naming them, of the Committee on the Census, in the nature of a select committee, or to the Committee of the Whole House on the state of the Union.

Mr. DOWELL. May I submit that a motion to recommit may be a very technical motion, and it seems to me that to include a motion to create a select committee would be subject to a point of order. These are two distinct propositions and one is not germane. Certainly in a motion to recommit one can not incorporate anything except an amendment germane to the bill.

The SPEAKER. The Chair has said nothing about the formation or creating of a committee. The House has complete authority and jurisdiction to do whatever it pleases. The committees are the mere agents of the House. It seems to the Chair that the proper motion under existing conditions would be to move to recommit it to the Committee of the Whole House on the state of the Union; that would certainly be in order.

Mr. RANKIN. Mr. Speaker, I understood the Chair to say a moment ago that, in his opinion, it would be in order also to move to recommit the bill to the members of the former Committee on the Census who are Members of this House.

The SPEAKER. As a select committee, not as a standing committee.

Mr. RANKIN. If I make a motion to recommit the bill to the Members of the present Congress who were members of the Census Committee in the former Congress, that would be in order?

The SPEAKER. The Chair thinks that would be in order.

Mr. RANKIN. To recommit it to them with instructions to report it back with amendments?

The SPEAKER. Yes; with the distinct understanding that it is recommitted to them, as members of a select committee, for this purpose only.

Mr. DOWELL. While I disagree with the Speaker that it may create a special committee in the motion to recommit—if that is carried out——

The SPEAKER. The Chair has made no such statement.

Mr. DOWELL. I understood the Chair to say that it might be done by recommitting it to the Committee on the Census——

The SPEAKER. The Chair said it was in order to move to recommit it to any select committee with instructions, but it would be a select committee.

Mr. DOWELL. Would the Chair hold it could be recommitted to the old Census Committee——

The SPEAKER. Not at all, since that committee is nonexistant. It would, however, be in order to recommit it to a select committee composed of the Members of the present House who were members of the Committee on the Census of the last Congress.

Mr. SNELL. Mr. Speaker, during the latter part of the Seventieth Congress we passed a reapportionment bill and a census bill; they went to the Senate, but for some reason did not pass that body. The same committee in the Senate considered both these bills in this special session and have sent the two bills combined in one bill for our consideration. In reading the report of the Census Committee I find that in all the main provisions of the bill they are practically the same bills we passed in the House with a few minor amendments. The object of the rule is to take the Senate bill (S. 312), consider it under the general rules of the House, and as no Census Committee has been set up during the present session——

Mr. RAMSEYER. Will the gentleman yield for a question?

Mr. SNELL. I yield.

Mr. RAMSEYER. What I want to know is where is this census bill? The Speaker a moment ago in answer to the inquiry of the gentleman from Iowa [Mr. DOWELL] stated that as a matter of form some of the bills were referred to the committee, if the committee is in existence. Is this bill now on the Speaker's table?

Mr. SNELL. At present it is on the Speaker's table and will be there unless the rule is adopted.

Mr. RAMSEYER. The Speaker has not let loose of the bill?

Mr. SNELL. He has not.

Mr. RAMSEYER. Then I think the gentleman is in order.

Mr. SNELL. Mr. Speaker, I do not think there is very much interest in the discussion of this rule as far as the House is concerned. If the gentleman from Alabama desires any time, I shall be glad to yield time to him.

Mr. BANKHEAD. I want some time.

Mr. SNELL. How much time does the gentleman want?

Mr. BANKHEAD. I am entitled to 20 minutes under the rule.

Mr. SNELL. I am glad to give the gentleman all he desires. Mr. Speaker, I yield 20 minutes to the gentleman from Alabama.

Mr. BANKHEAD. Mr. Speaker and gentlemen of the House, I have no quarrel with the provisions of the rule which has been brought in here by the Committee on Rules. I think it presents a fairly orderly provision for the consideration of this bill. However, I am unalterably opposed to the bill itself. Therefore, in order to be consistent, I opposed the granting of the rule in the committee, and I shall vote against the adoption of the rule and against the bill. I realize, of course, that under existing conditions any opposition to this bill that I may suggest will be absolutely futile.

I shall state very briefly my fundamental objections to the principles set forth in this bill. In the first place, I deny that there is any absolute mandate in the terms of the Constitution by which the Congress of the United States is directed preemptorally to apportion the Congress of the United States after the taking of each decennial census. The argument that has been made to support that contention is purely one of inductive reasoning and is not justified by a construction of the language of that section of the Constitution itself. When this question of the apportionment of Congress was being considered in the Constitutional Convention, I have been advised by a gentleman who made some research into the proposition that during the consideration of the question, on two separate occasions, proposals were made to write into the Constitution itself a mandatory provision requiring that Congress should, after the taking of the census, reapportion the Congress of the United States, and that both of those motions were voted down in the Constitutional Convention. This certainly very clearly reflects the spirit and purpose of the founders of the document as to a proper interpretation of that provision.

I am opposed to the provisions of the bill as it affects the apportionment of Congress, because I regard it as just another step that is being constantly taken here by the Congress of the United States toward the abdication and surrender of the vital fundamental powers vested in the Congress of the United States by the Constitution itself. Unfortunately there has been a tendency in modern times to take many of these steps. As I undertook to assert a few days ago in discussing the rule on the tariff bill, the Congress has weakened not only its power as a legislative body, but, in my deliberate opinion, it has weakened itself immeasurably in the estimation of the thoughtful people of the country by this constant surrender of the powers that it ought to exercise to some branch of the executive government of the country.

Any student of the fundamental philosophy of our Constitution must realize that if there is any great thought and purpose running through that whole instrument it is that there should be set up and maintained forever three separate, distinct, and independent coordinate branches of the Government; and that document vested certain powers in the legislative branch of the Government and vested certain definite powers in the Executive. The only authority that it gave to the Executive to impinge upon the jurisdiction of the law-making body was that he might from time to time make recommendations of policy to the Congress for their judgment and decision, or that he might exercise the veto power to disapprove of bills passed by the Congress which did not meet his approval. Here is a proposition that must be admitted fundamentally rests under the Constitution in the Congress, and it has always been exercised by the Congress, and properly so, because that is the orderly interpretation of that provision of the document; and I protest against the principle of this bill because it confers, it takes away from the law-making body the right vested in it to control the apportionment of its own Members and turns it over to the automatic consideration of the Executive.

Mr. McKEOWN. Mr. Speaker, will the gentleman yield?

Mr. BANKHEAD. Yes.

Mr. McKEOWN. Does the gentleman believe that this is one of the powers delegated to the Congress that it can delegate to somebody else?

Mr. BANKHEAD. I believe that at least the spirit if not the letter of the Constitution conferred upon the Congress, and the Congress alone, this power to deal with the question of apportionment of its own Members, because it is a matter of profound importance to every constituency in the country.

Mr. CRAIL. Mr. Speaker, will the gentleman yield?

Mr. BANKHEAD. Yes.

Mr. CRAIL. Is it not true that instead of being directly delegated to the Congress by the Constitution of the United States the Constitution merely says that Representatives in Congress and direct taxes shall be apportioned according to the respective numbers and does not say who shall do the apportioning, and that Congress has merely assumed it is the proper body to do the apportioning. I agree with that, but the Constitution, as I understand it, does not say who shall make the apportionment.

Mr. BANKHEAD. Even if the Constitution be silent in its provision as to who should exercise this power, it certainly has been accepted as a correct interpretation throughout all the years that it is the legitimate and therefore the essential function of Congress to exercise this duty.

Mr. McKEOWN. Mr. Speaker, I called the attention of the gentleman from California to the fact that the only controversy in the Constitutional Convention was whether they would have the States apportion the Representatives or leave the matter to the Congress. Nothing was said about the Executive making it.

Mr. BANKHEAD. I think the gentleman from Oklahoma is correct in that interpretation of the history of this proposal.

Mr. ROMJUE. And as an additional suggestion to the gentleman from California [Mr. CRAIL] I might say that the levying of taxes and the apportionment of Representatives can only be done by law, and Congress would be the only authority that could enact such a law.

Mr. BANKHEAD. I agree with that.

Mr. CRAIL. I was simply calling attention to the fact that the gentleman is making the direct statement that that power was given to the Congress in the Constitution.

Mr. BANKHEAD. That is my interpretation of the Constitution. I may be wrong. Of course, I realize the great solicitude and anxiety of the gentleman from California with reference to this proposition. The truth of the business is that back of this whole hysteria that we have been developing in the last few months with reference to the performance of our constitutional duty in this respect there is a purely political consideration.

The truth of the business is that States which will gain approximately six Members, like the State of California or the State of Michigan, which will gain a number of Members of the House, and others, have been the prime movers in this loud criticism that we see in the press about the Congress for 10 years failing to perform its constitutional duty; and here now, at the very last moment, almost, when we are in the act of taking the census of 1930, you are undertaking to salve your consciences for past derelictions by saying that we have failed in our duty and failed to carry out the mandate of the Constitution.

Mr. MONTAGUE. As I understood the gentleman from California [Mr. CRAIL], this was a duty not expressly devolved upon Congress.

Mr. BANKHEAD. That is what I understood him to say.

Mr. MONTAGUE. Let me read the first article:

All legislative powers herein granted shall be vested in a Congress of the United States.

That is the legislative power. The second section follows that. I read:

The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of 10 years, in such manner as they shall by law direct.

Who is meant by "they"? The Congress of the United States.

Mr. BANKHEAD. I think the gentleman from Virginia is eminently correct in his interpretation of that provision.

Mr. BURTNESS. Mr. Speaker, will the gentleman yield?

Mr. BANKHEAD. Yes.

Mr. BURTNESS. Do we take the position by this bill that when Congress may not do its duty we can go a step further and say that this particular Congress wants to do its duty at the last session, when presumably the data will be available at the next session? The position I take is that if this Congress waits until the last session it will have before it the information disclosed by the next census and can draft its legislation in the light of that information.

Mr. BANKHEAD. Yes; and at the same time carry out what I regard as the spirit and essence of the Constitution with reference to this problem.

If you pass this bill, you will be doing a vain legislative thing in its last analysis, because it must be conceded that the Seventy-second Congress would have the absolute right to repeal or modify or change its method of apportionment in any way that met with its judgment or approval. In the next place, you are assuming that the Seventy-second Congress will stand here and accept the decision of this Congress. Many new men may be here at that time, and in my opinion a great many new faces will be in the Seventy-second Congress, and they may have their own conception of their duty in this regard; and, as judged by the gentleman who has just interrupted me, they ought to be able to pass upon the facts and meet the necessities of the situation as it is then presented, and exercise their judgment as to how the apportionment should be made.

Mr. RAMSEYER. Mr. Speaker, will the gentleman yield?

Mr. BANKHEAD. Yes.

Mr. RAMSEYER. It is not the Seventy-second Congress to pass upon it; it is the Seventy-first Congress. We, ourselves, next December a year and will then have those facts before us, and it is we, ourselves, who are depriving ourselves now of the responsibility of passing upon the reapportionment.

Mr. BANKHEAD. I am glad my friend has called my attention to my inaccuracy of statement. I had overlooked the precise phraseology of the bill. But the gentleman is absolutely correct in reference to that proposition, and I think the gentleman will agree with me that if our consciences have been so quickened, as they now seem to be, there certainly will be full and ample opportunity after we have gotten the facts to pass upon these problems and conform to the tradition in taking this action.

But, gentlemen, of course you are going to pass this bill. There is no question in my mind about that. But before you pass it it ought to be amended in one essential particular, and that is that it should be provided in this bill that in the taking of the enumeration of the number of people in the United States under the Constitution aliens should be excluded in the count. [Applause.]

I do not know whether we will have an opportunity to amend it in that respect or not. I hope the gentleman from Mississippi [Mr. RANKIN] will be able to offer such an amendment during the consideration of the bill under the 5-minute rule. That is a matter that ought to receive the attention of this House—a profound judgment on the part of the American people on the question of whether or not some 6,000,000 people who have not taken out their citizenship papers, 3,000,000 of whom, I am informed, have been smuggled into this country unlawfully and illegally—shall be counted as a basis of representation. It is absolutely contrary to the spirit of our democratic institutions and contrary to the genius of our Government as understood that this vast horde of people, unassimilated, having no interest, no practical interest in property or in politics or in the theory of our Government, should be enumerated, against the interests especially of the great agricultural classes of this country, and I hope such an amendment will be incorporated in the bill.

Mr. PALMER. Mr. Speaker, will the gentleman yield?

Mr. BANKHEAD. Yes.

Mr. PALMER. In all deliberative bodies and conventions, when we appoint our committees and appoint a committee on credentials——

Mr. BANKHEAD. In a Republican convention?

Mr. PALMER. In any kind of a convention there is no procedure until the committee on credentials has ascertained whom we are going to count in this apportionment. Is not that a fact?

Mr. BANKHEAD. I do not know what the practice is in all conventions, but I submit that it is a proposition that ought to be carefully considered by this House in considering this proposition. I am glad the gentleman made the inquiry.

Mr. TINKHAM. Mr. Speaker, will the gentleman yield?

Mr. BANKHEAD. Yes; I yield to the gentleman from Massachusetts.

Mr. TINKHAM. In the Senate on May 23 there was inserted an opinion by the legislative counsel of the Senate in relation to the exclusion of aliens. It is signed by Mr. C. E. Turney, law assistant. I want to ask if the honorable Representative has read that communication?

Mr. BANKHEAD. I must confess that I have not. What is the point? [Laughter.]

Mr. TINKHAM. Well, the point is this, that there is assembled there a series of Supreme Court decisions and also the debates at the time of the passage of the fourteenth amendment, which conclusively show——

Mr. BANKHEAD. I thought the gentleman would get on the fourteenth amendment before he got through.

Mr. TINKHAM. We are discussing the fourteenth amendment now, are we not?

Mr. BANKHEAD. I thought the gentleman had in mind another phase of it.

Mr. TINKHAM. I had not. The opinion, however, shows conclusively, both by the debates and by the Supreme Court decisions, that it is entirely unconstitutional to eliminate aliens; that persons mean persons, including aliens.

Mr. RANKIN. Will the gentleman yield?

Mr. BANKHEAD. Yes.

Mr. RANKIN. The opinion to which the gentleman from Massachusetts refers simply goes up in the air and does not decide anything but finally admits its author finds no decision on this subject, and the ablest constitutional lawyer in the Senate, who debated this question from that standpoint, admitted finally in the RECORD that if the House passed this amendment the Supreme Court would not disturb it.

Mr. BANKHEAD. I have no doubt that under the recent practice of the Supreme Court of the United States and its interpretations of many acts of Congress that court would follow the precedents it has recently established in saying that Congress knew what it was talking about and therefore that the expression of this law was the expression of the Constitution and would uphold the constitutionality of such a provision.

The SPEAKER. The time of the gentleman from Alabama has expired.

Mr. SNELL. Mr. Speaker, as I understand the situation, there is no real opposition to the consideration of this bill at the present time. It is one of the special subjects to be considered in the special session and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER. The question is on agreeing to the resolution.

The resolution was agreed to.

The SPEAKER. The House automatically resolves itself into the Committee of the Whole House on the state of the Union, and the gentleman from Illinois, Mr. CHINDBLOM, will please take the chair. Will the gentleman from Michigan, Mr. CRAMTON, take the chair temporarily?

The CHAIRMAN (Mr. CRAMTON). The House is in Committee of the Whole House on the state of the Union for the consideration of S. 312, which the Clerk will report.

Mr. FENN. Mr. Chairman, I ask unanimous consent that the first reading of the bill be dispensed with.

The CHAIRMAN. The gentleman from Connecticut asks unanimous consent that the first reading of the bill be dispensed with. Is there objection?

There was no objection.

Mr. FENN. Mr. Chairman, I yield myself 10 minutes.

The CHAIRMAN. The gentleman is recognized for 10 minutes.

Mr. FENN. Mr. Chairman and members of the committee, after eight years of turmoil and travail we have at last come to the meeting of the ways. The Senate has sent to us a reapportionment bill. Associated with that bill is the census bill, and if you will bear with me I will make a comparison between the bill which passed the House at the close of the last session and the Senate bill. As far as reapportionment is concerned the bills are so similar as to be practically identical. I will first speak of the census bill and refer to the reapportionment bill at the close of my remarks.

Senate bill 312, providing for the fifteenth and subsequent censuses and for the apportionment of Representatives in Congress, is a combination of the bills which passed the House of Representatives at the last session, H. R. 393 providing for the

fifteenth and subsequent censuses and H. R. 11725 providing for the apportionment of Representatives in Congress. In combining these two measures the Senate has made a number of alterations, some of which affect in important particulars the legislation agreed upon by the House of Representatives and others are minor changes.

Section 1 of the bill providing for the fifteenth and subsequent censuses as it passed the House of Representatives directs that the census shall be confined to population, agriculture, irrigation, drainage, distribution, and mines. The Senate has added unemployment to this category of subjects, and it also provides that the census inquiries concerning population shall ascertain whether or not the families enumerated have radios.

Definite information concerning the number of unemployed is important. While there is grave question as to the practicability of including an inquiry of this character in the general enumeration of the population, nevertheless there appears to be a general desire that an attempt be made by the Director of the Census at the coming enumeration to ascertain the number unemployed, the reasons for the unemployment, and other data that will assist in a proper understanding of industrial conditions affecting employment. The inclusion of the inquiries on this subject will add materially to the expense of the enumeration and to the tabulation and presentation of the data. There, however, appears to be a general demand for the data, and as the Census Bureau is the only Federal office that will collect data from or concerning every individual in the entire country, there is a good reason for the provision.

The provision that the census schedule on population shall include an inquiry to develop the fact that the families do or do not operate radio receiving sets is questionable. It has been suggested to the Bureau of the Census that the schedule on population shall include a number of inquiries which perhaps are of greater importance than the ascertainment of the ownership or operation of a radio receiving set. Among these inquiries probably the most important is that the schedule shall include questions concerning the use of bathtubs, toilet facilities, gas stoves, and other features that are essential to proper living and good sanitation. The inclusion of inquiries of this character would add very materially to the work of the enumerators, greatly delay the enumeration of the population, and, if persisted in, would jeopardize the correctness of the census and make it impossible for the director to furnish the statistics of population in time to meet the requirement of the same bill, which provides that the data shall be furnished to Congress in December 1930. I therefore strongly recommend that this provision of the bill be excluded.

Mr. HOCH. Will the gentleman yield?

Mr. FENN. Yes.

Mr. HOCH. I notice there is a paragraph in the bill calling for a census of distribution. What is meant by a census of distribution?

Mr. FENN. The census of distribution originated with the President of the United States. It is to take into consideration the products from the factory to the distributor and to the retail store, so that they may get a picture of the business of the several communities, cities, towns, and so forth, in which goods are sold.

Mr. HOCH. What would such a census consist of—a census of distribution? I can understand what the purpose is.

Mr. FENN. It would include a distribution of clothing; that is, woolen goods, piece goods, and everything sold to the public, starting from the factory, and I may say they would even take a census of the chain stores.

Mr. HOCH. Does the gentleman mean to say we are to take a census of everything in every store in the country?

Mr. FENN. That would be impossible.

Mr. HOCH. Then, when you provide for a census of distribution, who is to determine where it is to begin and where it is to end?

Mr. FENN. The questionnaire in that regard, as with all other questionnaires, would have to be determined by the Census Bureau. This Congress does not lay down the specific questions to be put in the questionnaires.

The census bill, as it passed the House, provides that the census shall be taken in the year 1930 and every 10 years thereafter. In the Senate bill, this date has been changed to 1929. Section 6 of the bill provides that the census of population and agriculture shall be taken as of the 1st day of November, 1929. The corresponding section in the bill, as it passed the House, requires that the enumeration shall be made as of the 1st of May, 1930.

This subject was given long consideration by the Census Committee of the last House, and at last it was unanimously agreed that the date of May 1 was the best date. It is for the judgment of the House to determine whether the date shall be November 1 or May 1.

Mr. RANKIN. Will the gentleman yield?

Mr. FENN. Yes.

Mr. RANKIN. The Constitution provides that there shall be a census taken within every 10-year period. Is it not a fact that if the 1929 date that the Senate has inserted should be adopted, since we took the census of 1920 in January, if we take this census in November, 1929, we would be taking two censuses within a period of 10 years.

Mr. FENN. It strikes me that is true, and in fact, the public has been accustomed to have the census taken in what we have termed zero years, and taking that, as well as other matters, into consideration, the House committee and the House passed a bill fixing the date as of May 1.

I may say this is a departure from any date upon which any census has ever been taken, and a radical departure. I have the figures here. In all other years, except in the 1920 census, the census has been taken as of June 1 and August 1, until the census of 1920, which was taken as of January 1, 1920.

The Senate has added to section 2 of the bill as it passed the House of Represenatives the provision that the tabulation of the total population, by States, as required for the apportionment of Representatives, shall be completed within 12 months and reported by the Director of the Census to the Secretary of Commerce and by him to the President of the United States. This provision was evidently added in the Senate in order to make it more certain that the statistics of population would be furnished in time to meet the requirements of the bill in regard to the apportionment of Representatives than would otherwise be possible.

Section 3 of the House bill has been changed by the Senate so as to place under civil service the appointment of all special agents, supervisors, supervisors' clerks, enumerators, interpreters, and others who will be employed temporarily in the field work of the census.

In order to take a census of the United States it is necessary that the entire country be subdivided into supervisors' districts and each supervisor's district into enumeration districts. There will be about 100,000 enumerators employed on this work. The enumerators employed in the cities will be, under the law, obliged to complete their work in two weeks. In the rural districts they must finish their work in one month. The enumerators must be residents of the particular localities in which they will be employed. This is necessary because they have a more definite knowledge concerning the boundaries of the political subdivisions for which the data will be printed and they also are more familiar with the people residing in their respective districts. This is especially true in the rural districts. Manifestly, it would be impossible for the Director of the Census or any other official or body of officials to organize under civil-service regulations a large field force of this character. Furthermore, if an individual, man or woman, can write legibly, make clear figures, he or she is qualified to do good work as an enumerator, provided he or she has a pleasing personality. The success of the work depends upon the ability of the enumerators to secure correct replies to the inquiries to be made of each individual. It is impossible in a civil-service examination to judge of this element of personal contact.

The supervisors will be held responsible for the announcement (publication) of the statistics for the total population and number of farms in each political subdivision included in their respective districts. This announcement is to be made before they approve the vouchers of the enumerators. In order to be successful, they must be held responsible, in a measure at least, for the selection of the enumerators who will work under their supervision. Under no other method could a satisfactory census be taken. The supervisors will themselves hold temporary positions, being actively employed for two, four, and never more than six months. In each supervisor's office there will be three or more clerks, the number depending upon the number of enumerators employed in the district. The supervisor should be held responsible for the selection of these temporary office people. The special agents, who have been referred to as employees of the Census Bureau having a long term of employment, really take the place of enumerators in certain districts. They will be required to collect returns from manufacturing and mercantile establishments, those who do not make reports by mail. In only rare instances will they be employed for over six months, and when the work in their respective districts is finished their pay ceases and their services will be dispensed with. If this large number of field employees are now placed under civil service, the Director of the Census must give more careful consideration to those who do unsatisfactory work before dispensing with their services. All will, in a measure, have a civil-service status. In the meantime the work of the enumera-

tion of the population will be seriously retarded. The director should have authority to dispense promptly with the services of any supervisor, special agent, or enumerator who is not doing satisfactory work.

That section of the bill, as it passed the Senate, dealing with the apportionment of Representatives in Congress follows in the main the bill as originally passed by the House. The principal differences occur in the sections in the House bill which provide that on the first day of the second regular session of the Seventy-first Congress, and of each fifth Congress thereafter, the Secretary of Commerce shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed. The Senate bill provides that on the first day, or within one week thereafter, of the second regular session of the Seventy-first Congress, and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed. The differences in the two bills are that the House provides that the figures shall be furnished on the first day of the second session and the Senate bill provides that the figures shall be furnished on the first day or within one week thereafter. The House bill directs that the Secretary of Commerce shall transmit the report to Congress and the Senate bill that the President shall transmit the figures to Congress.

The bill as it passed the House provides that—

the number of Representatives to which each State would be entitled under an apportionment of 435 Representatives made in the following manner: By apportioning one Representative to each State (as required by the Constitution) and by apportioning the remainder of the 435 Representatives among the several States according to their respective numbers as shown by such census, by the method known as the method of major fractions.

The Senate bill provides that—

That on the first day, or within one week thereafter, of the second regular session of the Seventy-first Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the fifteenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the existing number of Representatives made in the following manner: By apportioning the existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method used in the last preceding apportionment and also by the method of equal proportions, no State to receive less than one Member.

If the Congress to which the statement required by this section is transmitted fails to enact a law apportioning Representatives among the several States, then each State shall be entitled, in the second succeeding Congress and in each Congress thereafter until such apportionment law shall be enacted or a subsequent statement shall be submitted as herein provided, to the number of Representatives shown in the statement based upon the method used at the last preceding apportionment; and it shall be the duty of the Clerk of the last House of Representatives forthwith to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the officer who, under section 32 or 33 of the Revised Statutes is charged with the preparation of the roll of Representatives elect.

This section shall have no force and effect in respect of the apportionment to be made under any decennial census unless the statement required by this section in respect of such census is transmitted to the Congress within the time prescribed in this section.

The House bill provides that—

If the Congress to which the statement required by section 1 is transmitted fails to enact a law apportioning the Representatives among the several States, then each State shall be entitled in the second succeeding Congress and in each Congress thereafter until the taking effect of a reapportionment on the basis of the next decennial census to the number of Representatives shown in the statement.

The differences in this last provision are that the Senate bill adds to the House bill the provision that—

until such apportionment law shall be enacted or a subsequent statement shall be submitted—

And that in the absence of such a statement the number of Representatives shall be based upon the method used at the last preceding apportionment, no reference being made to the subsequent census.

JUNE 3, 1929.

Hon. E. HART FENN,

House of Representatives, Washington, D. C.

MY DEAR MR. FENN: The hasty examination we have been able to make of the census apportionment law as it passed the Senate—S. 312—prompts me to write you, calling attention to the following provisions, which if allowed to remain in the bill will seriously interfere with the census. A copy of the bill changed as suggested is attached.

Section 1, providing for the scope of the census, has been changed so as to include radio sets and a corresponding change has been made in section 4. To take a census of radio sets it will be necessary to include the inquiry on the schedule for population and accompany it with instructions to the enumerators to make inquiry at every residence, apartment, institution, building, vessel, canal boat, or other place where any persons reside, if there is a radio set of any character in the place. Most of these sets are in operation, but there are many that are not, and the publication of a single total would be misleading. It should be accompanied with other information, such as the character of the set, can it be operated, is it in operation, etc. The population schedule now contains all the inquiries that it can carry and be successfully administered. It would be interesting and possibly of some economic importance to compile and publish data concerning the number of radio sets in use, but if the inclusion of such an inquiry jeopardizes the census of population certainly it should not be included in the census. For these and other reasons it is recommended that radio sets be omitted from the law.

Section 3 has been changed so as to make all appointments to the temporary field force of about 100,000 special agents, supervisors, supervisors' clerks, enumerators, and interpreters, under the civil service laws and regulations. The objections to such a provision are so well known that it is unnecessary to refer to them further than to state that the success of the census depends upon the ability of the field force to obtain quickly and correctly answers to the census inquiries. A pleasing personality and the confidence of the people approached are the two factors of vital importance. These can not be satisfactorily determined by a civil-service examination. Furthermore, all of these employees will be for work in the communities where they reside. It would be very detrimental to bring persons from other sections to enumerate the people, collect statistics of agriculture, manufactures, etc. It would be impossible under civil-service methods to secure a sufficient number properly located. The special agents and supervisors will be employed from 2 to 6 months, the supervisors' clerks about 3 months, the enumerators from 2 to 4 weeks, the interpreters (and there will be very few of them) for about 4 days. If they are all required to take a civil-service examination, the force can not be organized in time to take the census. Many of them may die or get other jobs before the work begins. The work should not be hampered by the inclusion of such a provision.

Section 3 has been further changed so as to make it impossible for the Census Bureau to secure the services of Indian agents, foresters, employees of the Bureau of Fisheries, Army officers or men at camps, superintendents of public parks, rural mail carriers or other Federal employees who are familiar with local conditions. These employees who have permanent positions will not do this extra work, or temporarily give up their regular work, unless they receive some extra compensation. Some of them will work without extra pay. In fact, the Bureau of Fisheries employees are now arranging to take the census of the Pribilof Islands without any extra pay. But such an arrangement can not be made with the Indian agents and others.

The census is an emergency work, and if the bureau can utilize with advantage Federal employees who may be stationed in outlying points, the bureau should have the privilege of doing so, but they can not secure the services of such people unless they are paid something extra for the work. None of these people will be employed more than two weeks or a month, depending upon the districts they will enumerate. In this connection, attention is called to the remarks of Senator KING on page 2156 of the CONGRESSIONAL RECORD of May 29, 1929.

The Senate made a number of other changes in the bill, but with these three exceptions (1. Radio sets; 2. Application of civil service to the field force; 3. Pay of employees of other offices for census field work) they will not hamper the work of the census.

Very respectfully,

W. M. STEUART, *Director.*

P. S.—My attention has just been called to the fact that section 3 has been changed by the inclusion of the following words in lines 5, 6, and 7, on page 3: "But not exceeding the compensation received by other civil-service employees engaged in like or comparable services." This change was introduced by Senator KING, and Senator JOHNSON wrote me on June 1, calling special attention to the fact that it was accepted "upon the distinct understanding that they should go out in conference if found inappropriate." It is inappropriate, because the majority of the temporary employees of the Census Bureau will be engaged in punching cards and doing other mechanical work for which, in all probability, they will be compensated on a piece-price basis, a fixed amount for each card correctly punched. A number of people are now employed in the bureau doing similar work on a salary basis, their salaries averaging about $1,400 a year. Manifestly, it would not facilitate the census work if the salary of these people employed on the piece-price basis is limited to this amount. They should be permitted to earn a higher salary depending upon the amount of work done. It is therefore recommended that this provision be ex-

cluded so far at least as it applies to the force employed during the census period of three years beginning July 1 next.—W. M. S.

Mr. HOUSTON of Hawaii. Will the gentleman yield for a question?

Mr. FENN. I yield.

Mr. HOUSTON of Hawaii. Section 16 provides for a census of agriculture and livestock in the year 1934.

Mr. FENN. That is a 5-year period.

Mr. HOUSTON of Hawaii. The provision does not state in what particular areas this is to be held, but I assume it is to be held in the same areas provided for in section 1; is that correct?

Mr. FENN. The gentleman's assumption is correct.

Mr. GIBSON. Will the gentleman yield?

Mr. FENN. Yes.

Mr. GIBSON. Are we right in assuming that the chairman of the committee questions the advisability of placing the appointment of the enumerators under civil service?

Mr. FENN. I certainly do [applause] and when the opportunity offers I will be pleased to give my reasons for it.

Mr. MICHENER. Will the gentleman yield?

Mr. FENN. Certainly.

Mr. MICHENER. The gentleman has referred to taking the census in May, and as I understood him, stated this was the best judgment of the House Committee.

Mr. FENN. It was.

Mr. MICHENER. Did the House Committee at that time have before it the fact that all of the farm organizations of the country and the Department of Agriculture—I say all and am using an inclusive word—were in favor of taking the census in November.

Mr. FENN. Off-hand, I can not inform the gentleman from Michigan as to the farm organizations, but I will say to the House that the Department of Agriculture did desire the date of November 1 and succeeded in having it put in the Senate bill.

Mr. MICHENER. Yes; does the gentleman know that in the Senate the farm organizations appeared and asked that the date be changed to November?

Mr. FENN. As I say, I am not aware of that fact. I do not doubt but what it is so, if the gentleman so states.

The CHAIRMAN (Mr. CHINDBLOM). The time of the gentleman from Connecticut has expired.

Mr. FENN. Mr. Chairman, I yield myself five minutes more.

Mr. RANKIN. Will the gentleman yield?

Mr. FENN. Yes.

Mr. RANKIN. The chairman of the committee will recall that when the Department of Agriculture came before the committee, its representatives were subjected to cross-examination, and when representatives of the Bureau of the Census came before the committee they were also subjected to cross-examination, and it was the unanimous opinion of the committee that the date should be the 1st of May.

Mr. MICHENER. Will the gentleman yield so I may ask the gentleman from Mississippi a question?

Mr. FENN. I yield.

Mr. MICHENER. Did the farm organizations, the Cotton Growers Association, the Grange, the Farm Bureau, the Dairymen's Association—did all the organizations appear before the House committee asking for the date of November 1?

Mr. RANKIN. I will say to the gentleman from Michigan that I do not think the representatives of the Department of Agriculture had time to propagandize the organizations and give them so much misinformation as to mislead them about the proper date for taking the census of population, and possibly we did not hear from all of them.

Mr. MICHENER. Then does the gentleman think that after they have had this propagandizing and have studied the matter and the interests of their respective constituents, we should pay more attention to them than to the judgment arrived at by the committee without any information.

Mr. RANKIN. Let me say to the gentleman from Michigan that the two men who have ground in this mill longer than anybody else that I know, are the gentleman from Connecticut [Mr. FENN], and myself. We have studied this question from every angle and I submit that after taking all the testimony and listening to every witness who wanted to come here—we even heard college professors on major fractions and equal proportion—after holding thorough hearings, it was the unanimous opinion of all the members of the committee from every section of the country that the date ought to be May 1.

Mr. MICHENER. Yes; and I think the gentleman after that consideration presented a very good bill to the House and I favored his bill.

Mr. RANKIN. The census bill?

Mr. MICHENER. The apportionment bill.

Mr. RANKIN. I agree on the census bill.

Mr. MICHENER. And I wondered if the change made in the Senate was a wise change.

Mr. RANKIN. Does the gentleman know or has it ever been intimated to the gentleman that all these farm organizations are against the provision of this bill that would delegate the power of apportionment of Congress to the Secretary of Commerce?

Mr. MICHENER. I would be greatly surprised if that were true, because I know that the farm organizations are now insisting on this particular bill.

Mr. FENN. That is the information we get.

Mr. RANKIN. This bill, if it were to be enacted as a farm-relief measure, would simply mean that it would relieve the farmers of representation.

Mr. THURSTON. Referring to the statement made by the gentleman from Michigan, I want to ask if there were any hearings before the Senate committee on reapportionment?

Mr. FENN. I have not been able to ascertain whether they had hearings or not. I know that they received a lot of letters and communications which they put in the RECORD. I have seen no record of hearings.

Mr. THURSTON. The Committee on the Census of the House did have hearings?

Mr. FENN. Yes; hearings almost interminable.

Mr. THURSTON. But the Senate did not apparently have any hearings on the subject.

Mr. FENN. If they held hearings, I think they were held in camera.

Mr. GIBSON. Is it not true that the only hearings that have been held on this bill—the reapportionment bill—were held by the House committee?

Mr. FENN. I think that is true if the gentleman means by hearings calling witnesses and examining them, and so forth.

Mr. GIBSON. I mean hearings in the common acceptance of the term.

Mr. MICHENER. The House did hold hearings, reported the bill to the House, the House passed it, and the Senate has now passed substantially the same bill, and we are asked again to consider the same bill.

Mr. FENN. As far as the reapportionment bill is concerned, that is true.

Mr. RANKIN. Mr. Chairman, I will yield myself 10 minutes.

Mr. FENN. Will the gentleman from Mississippi yield for a moment?

Mr. RANKIN. I yield.

Mr. FENN. Mr. Chairman, I ask unanimous consent that I may insert in the RECORD as part of my remarks a communication from the Bureau of the Census in regard to matters of the census.

The CHAIRMAN (Mr. ACKERMAN). Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. RANKIN. Mr. Chairman, I take it that no Member on the Democratic side is opposed to the passage of the bill to take the census. We not only have not opposed such a measure, but have done everything we could to facilitate its passage.

We have been very much criticized at the other end of the Capitol, and I regret extremely that the rules of this body prevent me from replying from the floor of the House to those unjust criticisms that have been hurled at Members of the House with reference to these two measures now combined in Senate bill 312.

We sent this census bill over to the Senate during the last session. We also passed a bill providing for an appropriation to pay the expenses, and those who criticized us most severely voted to strike the appropriation from the bill, thereby defeating the census bill in toto.

With reference to taking the census, we agreed on the date of May 1, for several reasons. In the first place the Constitution of the United States says in plain terms, so that even any Member of the Senate ought to understand it, much less a Member of the House, that we shall take one census within every 10-year period.

In 1920 the census was taken in January. If you have the regard for the Constitution that some of you profess, how can you justify taking another census in 1929? If you did not violate the specific letter of the Constitution, you would certainly violate the spirit of it.

Besides, in 1920 the census was taken in the winter time, the first time in the history of the Republic, and as a result we did not get a complete census of our agricultural population. That is the reason that under that census a great tier of States, beginning with Louisiana and going up through the Middle West and the Northwest, would have been stripped of

their representation in Congress thereunder, and which would have gone to the large cities with congested alien populations.

It was agreed by everybody who knew anything about it that in the spring of the year and the summer time more people are at home than at any other time of the year. There might be more at home in some particular sections in January—there might be more of you Iowa people in California in January, and there might be more of you people from Virginia in Florida—but you take the whole population, more people are at home, especially the people who are at work, who support the Nation with their toil—more people at home in May or June than at any other time of the year. That was the opinion of everyone except a little group down in the Department of Agriculture, who want to get control of the taking of the census. So far as I am concerned, the Department of Agriculture has just about as much as it can mismanage now without turning the census over to it. [Laughter.]

Mr. SUMMERS of Washington. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. For a question.

Mr. SUMMERS of Washington. Why does the Department of Agriculture want to take it in November?

Mr. RANKIN. It is an indirect move to try to get the taking of the census into the hands of the Department of Agriculture, and God forbid that Congress should ever go that far wrong. When it does that, you will never get another accurate census of the people of the United States.

Mr. COLE. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. COLE. I sympathize with the gentleman from Mississippi, but I think the statement with reference to the Department of Agriculture——

Mr. RANKIN. Oh, I do not yield for an argument.

Mr. COLE. The truth is that they want the census taken in November instead of May because between November and May about 14 per cent of the farm families change residence.

Mr. RANKIN. Oh, no.

Mr. COLE. Oh, yes.

Mr. RANKIN. I decline to yield for that kind of argument. I appreciate the gentleman's position. They put that argument up in the committee. The truth of the business is that in the South tenants never leave the farm until after they are through gathering their crops, and millions of bales of cotton are ginned after the 1st of January. In the North you have a great many different crops of which you do not know how much you make until after December.

Mr. COLE. In the North the tenants leave the farms around the 1st of March.

Mr. RANKIN. If the gentleman is from an agricultural State, and I know he is, he must know that the farmers are all there in May or June, if they are going to make a crop. They are there at that time in Mississippi, they are there at that time in Maine, and in every State of the Union where they are pretending to farm.

Mr. COLE. If the gentleman——

Mr. RANKIN. I shall not go into that farther. We argued that and heard that same argument in the committee.

Mr. ADKINS. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. ADKINS. In May are not all your help that live on the farm on the farm?

Mr. RANKIN. Yes.

Mr. ADKINS. And in the fall they go back into the cities and would not be on the farm?

Mr. RANKIN. Certainly.

Mr. ADKINS. And there would not be hardly any rural population left?

Mr. RANKIN. That is correct.

Mr. TAYLOR of Tennessee. Has the census ever been taken in May?

Mr. RANKIN. Yes; or rather in June.

Mr. TAYLOR of Tennessee. When?

Mr. RANKIN. Oh, in May, June, July, or August, every time the census has been taken up until the last time. The figures are in the hearings. I do not remember exactly.

I am not going to take issue with the gentleman from Connecticut [Mr. FENN] on the question of civil service. We want the census taken. We want people to go out and take the census who will take it and count every individual, and in order to get them to do that you are going to have to get people from the particular communities involved to do it. This bill provides for a civil-service examination, that will last longer than it would require to take the census, and that will leave some communities without anybody at all to take the census. That is what happened in 1920. We were at the peak of high prices then, and could not get people to go out and take the census for the compensation allowed.

You Republicans will pardon me for telling you a little bit of truth. Under the post office regulations, we have the greatest fiasco ever known. A man who can not read and write can make 80 per cent under the post office regulations for civil service. The rule laid down by the administration in 1921 is the last one that I had occasion to look at, because when I saw that I said, "God save the country, there is no use of my protesting," and I have not investigated it since. It provided that a man's "experience" should be allowed to count for as much as 80 per cent and that 20 per cent should be counted for his education. Are you going to apply that same rule here? Suppose you do? I want you Democrats to listen to this. A man can be a postmaster in your town, that is, he can make 80 per cent, and not know how to read or write, so far as the post office civil service regulations are concerned, and if you do not believe it go and get the regulations and read them.

In one town in Mississippi we had several college graduates, the very brightest people in the town, to take the examination, because we understood that, through a combination with a certain off-color Republican down there they were going to throw out a man already in, although he had been appointed by President Harding, and put in another man whom the people did not want. As I said, they got several people to take the examination, the very best people in the town, college graduates, and they not only did not get on the list, all of them, but the very fellow they were trying to knock out, who had no education, led the examination! I am saying this for the benefit of you Democrats who have the idea that you would gain anything by putting these census supervisors and enumerators under civil service. You would simply ball up the whole detail, as the boys in the service say, and get nowhere. You would complicate the situation and possibly retard, if not seriously hamper, the taking of the census. So, when it comes to that proposition, I am going to vote with the gentleman from Connecticut to strike that provision from the bill. [Applause.]

Mr. SIMMONS. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. SIMMONS. I call the attention of the gentleman to language in line 12, page 13. Does that limit the application of that to the employees under the Director of the Census in taking the census or does it apply to the entire Federal service?

Mr. RANKIN. I have not investigated that proviso, and I am not in a position to answer the gentleman's question. It was not in the original bill, as I understand it. But I ask gentlemen to remember this, if we are going to take the census: You are not here to get jobs for some of your friends and I am not here to get jobs for some of my friends, because if they make as big a botch out of it at this time as they did in 1920 I will not have a friend in the whole outfit among them by the time I get through with them in the fall, especially if they attempt to slight this work. I serve notice now, and I expect to serve notice later, that they are going to count the people of the United States and not guess at them. We must have an accurate, full, and complete census of all the people in the United States.

There was an amendment offered in the Senate which I expect to offer here to-day, to include a census of the aliens who are lawfully in this country and of the aliens who are unlawfully in this country. [Applause.] And if it is offered on your side, I shall submit an amendment to exclude aliens from the count in apportioning Representatives under the 1930 census. [Applause.]

Mr. DENISON. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. DENISON. However desirable that might be, how are the enumerators to determine whether an alien is here lawfully or unlawfully? That is a legal question.

Mr. RANKIN. Oh, that is an easy thing to ascertain. If the said alien comes from a foreign country, ask him about his naturalization, and, if he has no naturalization papers, he is an alien.

Mr. DENISON. How are you going to tell?

Mr. RANKIN. If he does not admit that he is an American citizen, he is not one.

Mr. SCHAFER of Wisconsin. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. SCHAFER of Wisconsin. Will the gentleman also vote for an amendment to exclude from the count the colored gentlemen who are not allowed to vote in the Southern States?

Mr. RANKIN. That illustrates the trouble that sometimes comes from Wisconsin. The gentleman does not know enough

about the Constitution to refrain from asking that kind of a question in connection with a serious discussion of a census bill. [Laughter.]

Gentlemen, do not misunderstand me. I have no prejudice against the foreign-born citizen, the man who comes here and becomes an American citizen. He has the right to be represented in Congress, and if he proves himself to be qualified he may be elected to Congress. But if he does not take enough interest in this country to become an American citizen I do not believe it is right to give him representation and at the same time take that representation away from Iowa and Mississippi and Missouri and other agricultural States. [Applause.]

Another thing. There are at least 5,600,000 aliens in this country who have never taken out their first papers. Now, suppose war should come again, as it did come. Those who are aliens from the countries with which we are at war can plead their alien citizenship and shirk military responsibility. We have no right to draft an alien enemy, unless he wants to enter the service. Then why should he be given representation in Congress and in the Electoral College?

Mr. BARBOUR. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. BARBOUR. The gentleman speaks of aliens who do not wish to become citizens and also those who do wish to become citizens.

Mr. RANKIN. Yes. I am glad the gentleman from California has made that distinction. Which one would you exclude?

Mr. BARBOUR. I would include all of them because the Constitution says we must.

Mr. RANKIN. I know the gentleman has too many of them already in his State, but he is wrong as to the Constitution.

Mr. STRONG of Kansas. He means let them all in, and let them vote after they get in. [Laughter.]

Mr. RANKIN. The gentleman from California [Mr. BARBOUR] speaks of those who want to become citizens. We judge a man by his acts. If he wants to become an American citizen, his acts will indicate it.

A man is born a citizen of some country or some locality and is a citizen of that locality until he moves to another locality with the intention of making it his permanent home. That is as plain as I can state it. The only way you can tell what he intends to do is by his acts. There are 5,600,000 aliens in this country who have never taken out their first papers at all or manifested any desire to become American citizens, and I contend that they have no right to be represented in Congress or in the Electoral College. [Applause.]

Mr. BARBOUR. Then why not distinguish between those who do not want to become citizens and those who do?

Mr. RANKIN. By ascertaining those who have not taken out any papers? Will the gentleman vote for that amendment?

Mr. BARBOUR. No. I think under the Constitution the aliens must be counted in apportioning Representatives.

Mr. RANKIN. I will take the gentleman's suggestion and draw the line at those who have never attempted to become American citizens, and exclude them from the count, if he will vote for it.

In doing that, I will say to the gentleman from California, that instead of taking representation away from Vermont and Maine and Kentucky and Mississippi and Louisiana and Virginia and Iowa and Nebraska and the Dakotas, those old settled American States, and giving it to the people who do not think enough of this country to become American citizens, millions of whom do not have the right to become American citizens, you will be doing justice to our own people who support the country in times of peace and fight its battles in times of war. [Applause.]

Now, I have one question that I want to ask of the gentleman from California. They tell us there are more than 3,000,000 aliens in the United States now who are here unlawfully, without our consent, against our will, and who are subject to be deported at any time we catch them. Does the gentleman from California want to count them?

Mr. BARBOUR. I am willing to count them if by counting them it will help us to deport them.

Mr. RANKIN. But you do not deport them. You simply send a Representative here to speak for them and give them a voice in the Electoral College.

Mr. BARBOUR. The gentleman asked me a question. When I answered his question it was not satisfactory, and then he answered it for me, but I did not say what the gentleman stated.

Mr. RANKIN. The gentleman from California knows that if there are two men in the House who are not going to quarrel it is the gentleman from California and myself. I do not want to misrepresent him or misquote him, but let me ask this question. The gentleman says he wants to count them and deport them. I am with him on that.

Mr. BARBOUR. I am for deporting them.

Mr. RANKIN. I understand the gentleman wants to deport them and not count them in apportioning Congress?

Mr. BARBOUR. If they should be deported, then I say do not count them.

Mr. RANKIN. If they are here unlawfully you would not count them?

Mr. BARBOUR. No; I would deport them as soon as we could locate them. If we found they were subject to deportation I would deport them.

Mr. RANKIN. Then if the census shows there are 3,000,000 of them—and one representative from the East told me there are 4,000,000 of them—the gentleman would be willing to eliminate those people from the count when it came to the matter of apportionment?

Mr. BARBOUR. Absolutely, yes. I would deport them. I would go farther than eliminating them from the count. I would deport them.

Mr. RANKIN. I would go along with the gentleman in deporting them.

Mr. BOX. Will the gentleman yield?

Mr. RANKIN. Yes.

Mr. BOX. I call the gentleman's attention to the fact that the deportation of a large number, probably the majority of these millions of aliens illegally in the country, is barred by statutes of limitation, most of which bar deportation after the lapse of five years.

Mr. RANKIN. And they can not become American citizens.

Mr. BOX. Yes; many of them can, because by a very bad law enacted at the last session of the preceding Congress we authorized the granting of immunity to these aliens who have illegally entered.

Mr. STEAGALL. Will the gentleman allow me to interrupt him?

Mr. RANKIN. Certainly.

Mr. STEAGALL. Suppose you base your representation on the aliens in our midst and then deport them. What becomes of the fairness of your representation based upon those who have left and are not here?

Mr. RANKIN. The gentleman from California, who has just gone through the confession, admits he is not in favor of counting them if they are here unlawfully; that is, of giving them representation in Congress.

Mr. BARBOUR. That is right.

Mr. RANKIN. I hope all of you other gentlemen who have misconstrued our motives in this fight will arrive at the same conclusion.

Mr. BARBOUR. Does the gentleman believe we can exclude the aliens in the count for representation under the Constitution of the United States as it now stands?

Mr. RANKIN. I am glad the gentleman asked that question and I shall be glad to discuss that phase of it.

Mr. DAVIS. Will the gentleman yield?

Mr. RANKIN. Yes.

Mr. DAVIS. Before the gentleman takes that up, I would like to know whether the gentleman from California considers it consistent for alien orientals not to be permitted to become citizens if they want to and for California to even refuse to permit them to own land and yet allow them to be represented in Congress.

Mr. BARBOUR. If the gentleman wants an answer to that, I would say that under the present provision of the Constitution of the United States we can not do anything else.

Mr. RANKIN. Let me answer the gentleman's question about the constitutionality of excluding aliens in making this apportionment.

Mr. LOZIER. Before the gentleman proceeds farther let me say the problem of counting aliens involves not only the representation which certain States may have in Congress but also their vote in the Electoral College.

Mr. RANKIN. Yes. I am coming to that. I want to say to the gentleman from California, speaking of the constitutional phase of this thing, that when the Constitutional Convention was in session they had at least four methods of apportioning representation before them. One of them was to base it on population; another was to include territorial extent; another was to include wealth; another was—and this was especially insisted upon by some of the members from the more industrial sections—to base it upon commerce, imports, and exports. The question of the slaves also arose. They decided to eliminate them all except population, and when they came to the point of deciding whom they would count they inserted the provision to count all free persons and three-fifths of the slaves. I know it has been argued—but no man has ever found a decision that

would back it up, in my opinion—that "persons" meant everybody.

For whom were they adopting a Constitution? The Constitution starts off with the statement, "We, the people of the United States." They were adopting a Constitution for the people of the United States, and it meant American persons. [Applause.]

Now, let me show you where you will get when you try to construe it otherwise. One fellow says it means all persons here at the time, but let us see. I do not suppose that even a Senator would go so far as to say that it means people in a foreign country. But there are visitors coming to our shores; there are people around the embassies and around the consulates whom we call attachés. Would you count them? Certainly not.

Would you count the foreign students who are over here in our colleges? Were they in the contemplation of the fathers of the Constitution? Why, no.

Then, would you count the visitors in this country, of whom there are hundreds of thousands at all times? Certainly not.

Then, whom would you count? Would you count the criminals?—and I use the word "criminal" advisedly. It is a violation of the criminal laws of this country for a foreigner to come here, bootlegged in without authority, and he violates the law when he comes here. Would you count him?

Do you think that by the wildest stretch of the imagination any member of the Constitutional Convention could ever have had the idea that we would be compelled, under the Constitution, to count people who are here unlawfully, and give them representation in Congress when they had to dodge the legal authorities to keep from being put in jail or from being deported at any time?

Mr. WAINWRIGHT. Will the gentleman yield?

Mr. RANKIN. I yield.

Mr. WAINWRIGHT. I understand the gentleman then to construe the words "counting the whole number of persons in each State" to mean simply citizen persons.

Mr. RANKIN. It means American persons, and I will say to the gentleman from New York——

Mr. WAINWRIGHT. Because that language, of course, is rather embarrassing although we may sympathize with the gentleman's views.

Mr. RANKIN. It means this: You determine who is an American by reason of his being here or from his intentions while he is here. If born here or naturalized he is an American. If an alien and he has manifested the intention of becoming an American citizen by taking out his first papers, we would have the right to include him in the count; but until he has done this, I think it is clearly our duty to exclude him; but, certainly, Mr. WAINWRIGHT, we are not compelled by the wildest stretch of the imagination to count people who are here unlawfully. Would you think so?

Mr. WAINWRIGHT. Will the gentleman yield further?

Mr. RANKIN. I will.

Mr. WAINWRIGHT. Simply for the purpose of having before us the exact words of the Constitution itself, I read from section 2 of the fourteenth amendment to the Constitution:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

Mr. RANKIN. I said that means American persons, and the reason they excluded Indians was because they were already here. They were already here, and in order to exclude them, it was necessary to specifically refer to them.

Now, I will say to the gentleman from New York that his own State excludes aliens from the count in apportioning the State legislature. The gentleman is aware of that fact?

Mr. WAINWRIGHT. Yes.

Mr. RANKIN. They have a perfect right to do that, and that is no reflection on the foreign born. You do not exclude the foreign born if he comes here and becomes an American citizen. He is then entitled to be counted.

Mr. SIMMONS. Will the gentleman yield?

Mr. RANKIN. Yes.

Mr. SIMMONS. I find this proviso at the bottom of the paragraph on page 3 of the Senate bill:

> *Provided*, That in the selection of the force necessary to the taking of the census, preference shall be given to American citizens and/or ex-service men and women.

What does that mean?

Mr. RANKIN. It simply means that they recognize that Americans are to take this census. It simply recognizes that Americans are the persons involved and they are the ones to take the census.

Mr. BARBOUR. Does it not mean that in some sections where many of the people speak a foreign language they will select an American who can speak that language to take the census rather than an alien who speaks the language?

Mr. SIMMONS. A man has to take an oath to support the Constitution of the United States before he can become an employee of the Government.

Mr. RANKIN. Yes; and a man who has violated the laws of the United States to get here certainly would not be a fit person to take an oath to support the Constitution when he owes no allegiance to it.

Mr. McKEOWN and Mr. McLEOD rose.

Mr. McLEOD. But that would not be an alien.

Mr. RANKIN. I will yield to the gentleman in just a moment.

Mr. McKEOWN. To carry out your idea farther, that it means American citizens, we might just as well count a Mexican in Mexico as to count him up here if he belongs to the Government of Mexico.

Mr. RANKIN. Certainly. Now, what was the question of the gentleman from Michigan?

Mr. McLEOD. That would not be an alien.

Mr. RANKIN. A man here in violation of law?

Mr. McLEOD. The gentleman said he would be excluded.

Mr. RANKIN. I say he should be excluded.

Mr. McLEOD. The same as a criminal.

Mr. RANKIN. And the gentleman is in favor of excluding him in reapportioning the Congress, is he not?

Mr. McLEOD. Are they criminals?

Mr. RANKIN. Yes; they come here in violation of the law.

Mr. McLEOD. They should be excluded if they are criminals.

Mr. RANKIN. Now let me read you something; this may not affect me and it may not affect you. The Secretary of Labor says that between sixty and seventy-five thousand of these undesirable aliens are bootlegged into the United States annually as seamen.

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. RANKIN. For one question, if the gentleman will be brief.

Mr. SCHAFER of Wisconsin. The gentleman knows that a certain organization in this country has been in favor of excluding aliens in the count—the Ku-Klux Klan. Under the pending bill will the former chief wizard of that organization in Indiana, who has been convicted and is now in prison, be counted?

Mr. RANKIN. Let me say that there are a few gentlemen in this House—the gentleman from Wisconsin and two or three others—who, every time an American gets up and appeals for Americanism, jump up and holler "Ku-Klux Klan." Now take a good look at an American who never belonged to the Ku-Klux organization. Take a look at one whose people came to this country before the Revolution and who is just as strong for keeping America for Americans as the Ku-Klux or the anti-Ku-Klux ever dared to be. [Applause.]

Mr. SCHAFER of Wisconsin. But the Ku-Klux have been strong advocates for excluding aliens in the count.

Mr. RANKIN. I do not care if it does; I would not care if the gentleman's whole antiprohibition crowd favored it. That would not influence me. [Laughter and applause.]

Now let me read you this clipping. It was said over in the Senate that there were 3,000,000 of these people here who have violated the law to get in. Are you going to give them representation in Congress and take it from old-line Americans?

Would you exchange 1 gentleman from Maine, 1 from Kentucky, 1 from Nebraska, 1 from Mississippi, 1 from Louisiana, 1 from Tennessee, 1 from Virginia, 2 from Missouri, and so forth? Would you take away a Representative from each of these old-line American States and give them to criminal aliens who have no right in this country?

The other day at Geneva—I do not suppose that there are any Ku-Klux in Geneva—this statement was made. These alien bootleggers do not come here under the quota law, they do not come here and stand examination and have their records investigated. The truth is they are the worst criminals we have. From them are recruited the gunmen, the bootleggers, the gangsters. They are the worst criminals that come to our American shores.

This statement says that between 60,000 and 75,000 undesirable aliens are bootlegged into the United States annually as seamen. They are shipped out of Bremen, Hamburg, Amsterdam, and Antwerp. I will read the clipping.

> ALIENS BOOTLEGGED AS SEAMEN, CHARGE—UNDESIRABLES ARE SMUGGLED FROM EUROPE'S PORTS, ANDREW FURUSETH DECLARES
>
> GENEVA, May 31 (N. Y. W. N. S.).—Between 60,000 and 75,000 undesirable aliens are bootlegged into the United States annually as "seamen," shipping out of Bremen, Hamburg, Amsterdam, and Antwerp,

according to Andrew Furuseth, president of the International Seamen's Union. Before coming to Geneva to attend the twelfth conference of the League of Nations Labor Bureau, Furuseth spent about five days in each of the above-mentioned seaports secretly investigating for Secretary of Labor Davis the conditions which permit wholesale smuggling of aliens into America.

Listen to that. Talk about bootlegging. These bootleggers bring a burden that will pass to your children and your children's children, who will be sacrificed upon the altar of this damnable practice. I will give you a show-down when the time comes to vote, and see if you are going to perpetuate it. The article continues:

He declares that the average price for "passage" as a seaman is between $200 and $400. Aliens who are refused passage because of moral turpitude, or who have been deported, easily secure false seamen's papers through boarding masters and go ashore in American ports as seamen.

They bring them here and dump them on you as an economic and moral problem to deal with, charge them $200 to $400 apiece, knowing that they can not squeal. And yet there is so much power around this Capitol opposing the passage of law that would subject them to registration that you can not pass it. Here is a good chance to get their names on the dotted line.

The article continues:

So long as the present control exercised by British and Norwegian shipowners is enforced, Antwerp and Rotterdam will remain clean ports with a minimum of smuggling of undesirables, says Furuseth. There's no control in Amsterdam, while Bremen and Hamburg are both wide open, doing a flourishing business.

If anybody from Iowa, Kansas, Nebraska, or any other losing State, asks you where his Representative went, you clip this out of the RECORD and show it to him.

While refraining from making direct charges, Mr. Furuseth's report to Secretary Davis will reveal that American vessels are among the most flagrant offenders.

They are brought here by Americans in American vessels, owned by Americans, who are willing to sacrifice the future of our civilization in order to gain a few paltry dollars.

Mr. BARBOUR rose.

Mr. RANKIN. I know the gentleman from California will agree with me in this, that they bring to us the very worst element from the Old World.

Mr. BARBOUR. I agree with what the gentleman says. We have gotten into a discussion of the immigration question, upon which the gentleman from Mississippi and I are not in disagreement.

Mr. RANKIN. I understand.

Mr. BARBOUR. I am just as strong as is the gentleman from Mississippi for spotting these people and deporting them. Then we can deport them instead of counting them on our apportionment.

Mr. RANKIN. I do not want to leave a wrong impression about the attitude of the gentleman from California [Mr. BARBOUR] or of any other Member of the House, but the point I am getting to is this. If 75,000 come in as seamen, is it not reasonable to suppose that Secretary of Labor Davis is correct when he says that all together there are around a thousand a day coming to our shores? Yet we are asked to tear up the old American States and give their representation to those alien people. Draw the line at citizenship, and then you will see that those who are here with the intention of becoming Americans, who are here lawfully, will become citizens, and you will have no more trouble with them.

Mr. SIMMONS. What about those people who are here legally, but who, under our laws, can never become citizens?

Mr. RANKIN. They ought to be excluded. If they can never become American citizens, they ought not to be included in the count.

Mr. LAGUARDIA. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. LAGUARDIA. I agree with what the gentleman says on a number of aliens who come in here as seamen, but I believe the gentleman's figure as to the number in the United States unlawfully is somewhat exaggerated. Will the gentleman give the source of that total?

Mr. RANKIN. I will give the best source that I have. Secretary of Labor Davis says that in his opinion there are about a thousand a day. That would be 365,000 a year. In order to be extremely conservative some one in the Senate reduced that and said that he would take it for granted that there are 200,000 a year. That would be a million every five years. But the estimate now is that there are about 3,000,000, and when I made that statement to an eastern Representative the other day he said that in his humble opinion the number is nearer 4,000,000 than 3,000,000.

Mr. LAGUARDIA. I took this up with Secretary of Labor Davis, and he does not think there is anything like that, and if the gentleman will take 3,000,000 and figure how many ships it would take to transport them, to get them here since 1924, he would see that, with existing accommodations, that could not be possible.

Mr. RANKIN. They do not all travel by sea, of course.

Mr. LAGUARDIA. But they have to get here.

Mr. RANKIN. Oh, we have great stretches of border line along Mexico and Canada.

Mr. LAGUARDIA. But they would have to get there.

Mr. BOX. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. BOX. The Assistant Secretary of Labor, Hon. Robe Carl White, and Commissioner General Hull, both testified before your Committee on Immigration and Naturalization in January, 1926, as I recall their testimony and as it is printed in the hearings, that up to January 3, 1921, the time when we passed the first percentage act, about 1,300,000 aliens had illegally entered the United States prior to June 3, 1921. That was an estimate made by them as the result of a hurried general survey, in which they used their own service. All who have come here since that time, in the eight years intervening, would have to be added to the 1,300,000 included in that estimate. If aliens have been entering the United States illegally at the rate of 1,000 per day, as the press has repeatedly reported the Secretary of Labor as declaring in public speeches at many points, then more than 2,500,000 have entered in contempt of law since June 3, 1921. Candidly, I think 1,000 per day is too high an estimate of the number of aliens entering in violation of law. One-half that number would be a safer estimate. That would give us more than 2,500,000 aliens illegally in the country now.

Mr. McCORMACK of Massachusetts. The gentleman says that he is in favor of the citizenship test. What are the gentleman's views about drawing the line on "interested" citizenship?

Mr. RANKIN. That line would be so hard to follow that I would not want to subject a Congressman to that trying ordeal.

Mr. COCHRAN of Missouri. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. COCHRAN of Missouri. The gentleman has made an extremely strong statement when he says Americans are bringing those people into the United States in violation of the law and are receiving money for it.

Mr. RANKIN. I read that statement.

Mr. COCHRAN of Missouri. Has the Secretary of Labor told the gentleman or has he gathered any other information as to the number of those people he is prosecuting and sending to jail for violating the law?

Mr. RANKIN. No. All I was doing was reading from the report of a representative of the International Seamen's Union, made at Geneva.

Mr. COCHRAN of Missouri. I come from a big city, and I do not know of any case, nor can I recall one, where the Secretary of Labor has sent any man to jail for illegally bringing anybody into this country. If it is as bad as the gentleman says, it is about time that he was enforcing the law.

Mr. RANKIN. I am in favor of enforcing the law.

Mr. WYANT. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. WYANT. Is it the gentleman's idea that when the enumerators come to taking the census, every foreign born shall present evidence of his citizenship?

Mr. RANKIN. He shall at least make the statement, if he is foreign born, as to when and where he was naturalized, and if he has been naturalized, he will say so.

Mr. WYANT. In the event that a man is legally admitted to the United States, but had not stayed the required time to take out his first papers and he declared he intended to become a citizen of the United States, would the gentleman have him counted or not?

Mr. RANKIN. So far as I am concerned, I would draw the line at citizenship. If the gentleman from Pennsylvania wants to draw the line at those who have taken out their first papers I would support that amendment. I am not arbitrary about it; I am not in favor of seeing these old American States, with their great traditions and history, stripped of their representation, as some States will be if this bill passes in its present form, and see that representation go to the alien bands who have piled into this country, the vast majority of whom are not American citizens, and have manifested no desire to become

American citizens, and who possibly are here in violation of law and can not and ought not to become American citizens.

Mr. WYANT. In the event the first papers should be taken out, pending the time when the alien would take out final papers, and that condition were placed in the amendment, would the gentleman vote for the amendment?

Mr. RANKIN. I would. If an amendment were offered to exclude all aliens who have not taken out their first papers for citizenship from the count in reapportioning Representatives would the gentleman from Pennsylvania vote for it?

Mr. WYANT. I would vote to exclude all persons from the count who have not been admitted to citizenship in the United States.

Mr. LOZIER. Mr. Chairman, will the gentleman yield there?

Mr. RANKIN. Yes.

Mr. LOZIER. Is it not true that under the prescribed regulations in the past enumerators were required to ascertain the date and place of birth, and we would only be going one step farther to ascertain from a man born abroad whether or not he is naturalized, and if naturalized, when and where?

Mr. RANKIN. Yes.

Now, I must hurry along. There is one more amendment I would offer. Those who have held up this reapportionment bill say we would violate the Constitution. If there is a man who thinks we would comply with the Constitution by passing this particular bill as it is, I would like to know who he is. If the Constitution is mandatory that you must reapportion after each census, if you are under obligation to reapportion under the census of 1920, all you have to do is to do so by a majority vote. But you are not apportioning by this bill. You are just "passing the buck."

Mr. HUDSON. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. HUDSON. If the gentleman from Mississippi could not secure the amendment he is advocating, would he be in favor of providing that in taking the census we shall take the citizenship of the country?

Mr. RANKIN. That is already done. The bill does not expressly require it.

Mr. HUDSON. That is not in this bill.

Mr. RANKIN. They always do that.

I am going to offer another amendment. In 1921 we brought in a bill that would have done approximate justice to all concerned, increasing the membership of the House to 460. It was not favored by some, but it was the best that could be done. It was a compromise. You men who favor this bill voted to recommit that bill and prevented it from passing.

Mr. BARBOUR. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. BARBOUR. I want to remark here that the bill the gentleman refers to did not contain any provision for excluding aliens. They were to be counted.

Mr. RANKIN. Yes. That is one place where we made a mistake.

Mr. BARBOUR. I understood the gentleman to state that it was a perfect bill.

Mr. RANKIN. Not at all.

Mr. WYANT. Has the gentleman any information that would show how it would affect the different States?

Mr. RANKIN. Yes. I will insert it in the RECORD if it has not already been done.

Mr. HUDSON. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. HUDSON. Can the gentleman state how many State legislatures apportion districts within their States on citizenship only?

Mr. RANKIN. It is done in many States, including New York, North Carolina, Washington, and Tennessee. The reason why the other States do not mention it is that they simply lay out the map and write the map into law.

Mr. TINKHAM. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. TINKHAM. Is not citizenship defined in the first section of Article XIV of the Constitution, where it says:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States?

Mr. RANKIN. I accept the Constitution's definition of that, but I decline to yield further.

Mr. WAINWRIGHT. Mr. Chairman, will the gentleman yield?

Mr. RANKIN. Yes.

Mr. WAINWRIGHT. Is there anything in the Constitution that requires a reapportionment every 10 years?

Mr. RANKIN. I do not think it is mandatory. The reason this question has never risen before is that we have never been confronted before with this particular condition. When the war broke out the right to send troops abroad was questioned. It had never been before us previously. This question had never been before us because that situation had never come up.

Mr. LAGUARDIA. Does not the gentleman think that it was the intention of the Congress that when we provided a census there would be a reapportionment every 10 years?

Mr. RANKIN. Well, if you are taking the gentleman's statement as correct, you are dodging that by passing this proposed law and "passing the buck" on to the Secretary of Commerce by permitting him to do what you have neglected to do. Of course, the gentleman knows that my view is that it is not mandatory, but I think it is nothing short of puerile to pass this bill to delegate to the Secretary of Commerce the power to reapportion while this same Congress is alive and in office.

Mr. DAVIS. Mr. Chairman, will the gentleman yield there?

Mr. RANKIN. Certainly.

Mr. DAVIS. Is it not a fact that the word "persons" is used 19 times in the Constitution, and in most instances it clearly and indisputably means citizens?

Mr. RANKIN. Certainly.

I will tell you of another amendment I am going to offer. I will show you a way out of this muddle. Some men have said that we would not reapportion when the census was taken. Every man who opposes this bill says that when the census is taken in 1930 we will reapportion Representatives in Congress. I shall move to amend, among other things, by striking out——

Mr. FENN. Mr. Chairman, will the gentleman yield there?

Mr. RANKIN. Yes.

Mr. FENN. How does this bill prevent Congress from reapportioning?

Mr. RANKIN. I am glad that the gentleman from Connecticut asked that question. I thought he knew. I shall move to strike out all from line 12 on page 16 down to and including line 9 on page 18.

That will leave the Secretary of Commerce to make his report to Congress and leave it in your hands—the Congress of the United States, the Representatives of the American people—to make the apportionment.

Now, then, let me answer the gentleman from Connecticut. He says: Why can we not reapportion the next time? I will tell you why. If the alien influences have power enough in this Congress to prevent our striking them from the roll, and keep them from being represented in the next Congress, they will at least have power enough to block apportionment in either the House or the Senate. You pass this bill—and do not misunderstand yourselves—and you will have delegated the power of reapportioning this House of Representatives. You will have abdicated that sacred power vested in you by the people of your district and turned it over to the representatives of a bureau or of a department, and, mark my words, you will never take it out of their hands.

You come in here in 1931 and attempt to pass a reapportionment bill, and say you get by the Census Committee—and I have seen bills that did not get out of the Census Committee; with all the persuasive eloquence of the gentleman from California they could not bring a bill out of the Census Committee when his party had a majority of 169 in this House. And what will the representatives of the farmers do the next time, if, forsooth, those representing these large congested centers, with their alien population, do not want us to make a reapportionment for fear we might increase the representatives of Americans in this House and exclude from the count those people who are here unlawfully and not entitled to representation?

Mr. BEEDY. Will the gentleman yield?

Mr. RANKIN. Yes.

Mr. BEEDY. I go along with the gentleman until he comes to this section which pertains to the duties of the Secretary of Commerce. The gentleman states that we are having some trouble in excluding these aliens from the country and tells us that if they are as effective and influential when we come to the time when it would be our duty to apportion as they are now perhaps we might not get any apportionment.

Mr. RANKIN. I did not mean they would have any undue influence on the department, but I said they would block the passage of any bill we might try to pass for reapportionment under the law.

Mr. BEEDY. That being so, is it not desirable that the Secretary be permitted to make the apportionment?

Mr. RANKIN. No. Suppose we wanted to exclude them then?

Mr. BEEDY. I am assuming we can exclude them now.

Mr. RANKIN. You wait until these Members go back home and see their old-line American constituents, and this matter is discussed around the fireside; then you are going to see them

come back here asking for an amendment of this kind. Then, I say, the alien influences which have such great power now might be able to block it and prevent the passage of any such law, and force apportionment to come from the Department of Commerce.

Mr. SCHAFER of Wisconsin rose.

Mr. RANKIN. While the gentleman from Wisconsin is on his feet let me say this to him: He does not realize what he is getting into, as usual. [Laughter.] If we have the power to exclude these people, the Secretary of Commerce will have that power when we delegate it to him. Therefore, if we have the power to exclude them, he would have the power to exclude this element, that element, or the other element, and the gentleman from Wisconsin might find some of his constituents included in that element, in which event he would be absolutely helpless and hopeless so far as getting any relief is concerned.

But there is no use passing this bill. Strike this section from it and retain in Congress, where the fathers of this Republic intended for it to eternally rest, the power to reapportion Congress after the next census. [Applause.]

Mr. GIBSON. Will the gentleman yield for a suggestion?

Mr. RANKIN. Yes.

Mr. GIBSON. The gentleman from Maine and the gentleman from Mississippi have stated that the authority to make this apportionment under this bill rests with the Secretary of Commerce. May I call the gentleman's attention to section 22, which seems to vest that power in the President rather than in the Secretary of Commerce?

Mr. RANKIN. Well, the Secretary of Commerce, of course, is the personal representative of the President.

Now, I am not criticizing the President or the present Secretary of Commerce, but you do not know who will be President four years from now, or eight years from now.

It is said that when James A. Garfield stood on the front steps of the Capitol and took the oath of office in 1881, he had never heard the name of Grover Cleveland, who succeeded him four years later. You do not know who will be the President of the United States when this question arises again.

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. RANKIN. Yes; I yield.

Mr. SCHAFER of Wisconsin. If the question of not counting the aliens is such an important proposition, why is it that the gentleman's own State counts aliens and why does he not do some missionary work in his own State?

Mr. RANKIN. I will say to the gentleman from Wisconsin that there are so few aliens in Mississippi that it is too much trouble to hunt them up. [Laughter and applause.]

Mr. SCHAFER of Wisconsin. It is not a question of numbers. If there was only one alien in the gentleman's State, if his principle is sound, the gentleman should work to exclude them in the apportionment, in his own State, by the State legislature.

Mr. RANKIN. I am willing to abide by the principle and I am applying it to my own State. The county from which I originally sprang has only two people in it who were born in a foreign country—a couple of old women who came there years ago, and I will get their consent, if the gentleman from Wisconsin prefers it, to have them eliminated from the count in reapportioning the next Congress. [Laughter.]

Mr. MICHENER. Will the gentleman yield?

Mr. RANKIN. Yes.

Mr. MICHENER. I think the gentleman has made it very clear that he is satisfied, from a constitutional standpoint, that the Congress has the right to amend the bill excluding aliens from the count; is that correct?

Mr. RANKIN. Yes.

Mr. MICHENER. The gentleman appreciates also, does he not, that there are very many very good and recognized constitutional lawyers in the country who take another view?

Mr. RANKIN. Yes; I realize that.

Mr. MICHENER. So, as a matter of fact, it is an open question.

Mr. RANKIN. Let me say to the gentleman from Michigan that the best speech I have heard on it, made by one of the ablest constitutional lawyers around this Capitol, was made by the gentleman from Virginia, the Hon. HENRY ST. GEORGE TUCKER, which convinced me we had the constitutional right. Now, the man whom I consider the ablest constitutional lawyer at the other end of the Capitol, while doubting whether or not this was within the scope of the powers that the framers of the Constitution intended for us to exercise, Senator WALSH of Montana says that if Congress should pass this amendment the Supreme Court would not disturb it.

Mr. FENN. What was the vote in the Senate on it?

Mr. RANKIN. I understand that. I am just talking about the legal phase of it.

Mr. FENN. I am talking about the practical part of it.

Mr. RANKIN. Two of the ablest men over there voted against it because they doubted whether the framers of the Constitution intended for us to have the power to eliminate the aliens, but one of them said that in his opinion if we did do it the Supreme Court would not disturb it, and both of them said they were in favor of amending the Constitution in order to eliminate them. If they are in favor of amending the Constitution, in order to give us power to exclude aliens, and the Supreme Court is willing to say that we have the power now, why go to the trouble of amending the Constitution? Why do you want to write legislation into the Constitution unnecessarily?

Mr. MICHENER. Did the gentleman read the speeches of Senator GEORGE and Senator WALSH and Senator BRATTON not agreeing with the conclusions of our good friend, Judge TUCKER?

Mr. RANKIN. Well, Senator WALSH said that in his opinion if we passed this amendment the Supreme Court would not disturb it.

Mr. MICHENER. The gentleman has repeated that, but Senator WALSH made his speech on the theory and bottomed on the ground that we could not constitutionally do this.

Mr. RANKIN. Yes.

Mr. MICHENER. He said, however, that the Supreme Court had been going a long way lately and that they might violate, as he considered it, the Constitution in their decisions.

Mr. RANKIN. The Supreme Court of the United States has possibly gone a long way at times, but it will never go far enough to say that it is our duty to give aliens representation in the American Congress or to give representation in this body or in the Electoral College to men who have come to our shores in violation of law and who have no right to remain on American soil. [Applause.]

Mr. FENN. Mr. Chairman, I yield 10 minutes to the gentleman from California [Mr. LEA].

Mr. LEA of California. Mr. Chairman, I desire to discuss the question of the right of Congress to exclude aliens from the enumeration for the purpose of apportioning Representatives in Congress.

The Constitution provides that for this purpose we shall enumerate "the whole number of persons in each State." This is ordinary language. There is no reason in the language itself, in common sense, or in the conditions under which the Constitutional Convention wrote this language, that justifies any deviation from its ordinary meaning as accepted by even the school children of America.

In the debate in this body and in the Senate the question is confused with the question of the class to be enumerated and the locality of those to be enumerated.

"Persons" defines who are to be enumerated. "In the State" refers to locality of those to be enumerated. There is no use trying to confuse the meaning of the term "persons" by raising confusion about the locality of their presence or as to the kind or extent of their presence "in the State."

The census law might provide for the enumeration of "farms." There might be a dispute whether a particular farm was in North Carolina or South Carolina, or in Montana or Canada. That would not raise any question about the fact it was "a farm." The census might provide for the enumeration of "horses." The question as to whether horses that feed on both sides of the national boundary should be enumerated would raise no question as to whether or not the animal was a horse. The question whether or not any given person as a presence in this country that requires that he should be enumerated creates no doubt about his being "a person."

Over 80 years ago in this country many people argued that a slave was not "a human being." To-day Congress seriously discusses whether or not a man born in Europe is a human being—"a person." We are asked to interpret the Constitution as meaning that a human being born in Europe is not a person and that a human being born in America is a person.

The contention goes farther than that. According to the contention of the gentleman from Mississippi, when such a man steps into an American court to take the oath of allegiance to this country, when he raises his hand he is not "a person," but when he lowers his hand he is "a person." The high question presented is, When is a man not a person? A person is made by God and a citizen is made by the laws of the country.

Now, as to the conditions of the Constitutional Convention under which this language was placed in the Constitution. What was the attitude of those in the Constitutional Conven-

tion? A large number of them had been in the Continental Congress. The Continental Congress passed a law giving aliens in this country a right to vote when it adopted the ordinance for the northwest territory. These men went to the Constitutional Convention and wrote this language into the Constitution. Some returned to the Congress of the United States, and under the Constitution, helped reaffirm that same organic law for the northwest territory.

From then until the Civil War Congress voted charters for various Territories of this country, and in a large number of those charters gave aliens the right to vote.

In 1802 Congress passed the organic law for the District of Columbia. The Congress of the United States within 14 years after the Constitution was adopted gave aliens the right to vote in the Capital of the Nation. In 1858 a question arose in Congress as to whether or not aliens should be given the right to vote in the Territories. A committee of Congress was designated to study the question. A report was presented in which it was declared against the spirit of the Constitution that we should have various standards of voting in Territories, but the conclusion was reached that the question should be left to the Territories themselves to determine.

I think any intelligent person must assume that those who wrote the Constitution and even favored giving aliens the right to vote, never intended aliens should not be enumerated in taking the census of the United States for apportioning Representatives among the States. It would stultify their motives to suppose that they intended any such purpose by this language. They understood the use of language. They used the term "persons" in the Constitution in its ordinary sense without any abstruse refinements to conceal any sinister purposes.

Long before the Civil War and before a line of the fourteenth amendment was written, various States of the Union permitted aliens to vote for President of the United States. In 1918 seven States permitted aliens to vote for President of the United States. Arkansas, Indiana, Kansas, South Dakota, Missouri, Texas, Alabama, Kentucky, Minnesota, and Oregon have all heretofore at times authorized aliens to vote and many of these States permitted aliens to vote at the time the fourteenth amendment was adopted.

Mr. LOZIER. Will the gentleman permit a question?

Mr. LEA of California. Yes.

Mr. LOZIER. There was a time in Missouri when they permitted those who declared their intention to become citizens to vote, but it has not been so for a number of years.

Mr. LEA of California. However, whether or not a man declares his intention to become a citizen ought not to affect the question. He is an alien until he is naturalized and the Supreme Court has so interpreted the law.

We get a further understanding of this provision in the Constitution if we will refer to the controversy that preceded it in the Constitutional Convention. Under the Articles of Confederation every State had one vote in Congress regardless of how many Representatives the State had in the Continental Congress. All States had equal voting power in Congress, regardless of the population or wealth.

When they came to write the Constitution, the little States wanted to retain that same equality with the big States. The big States very seriously objected. Their fundamental objection was that they did not want to confer upon the more numerous little States the power to place the burden of taxation to support the Government on the big States. So the big States refused to join in forming this Government on a basis of equality with the small States. They proposed a compromise that was accepted. That compromise included these provisions. In the first place it was provided that bills for raising revenue shall originate in the House of Representatives. In other words, the House of Representatives represents the population of this country. The big States are protected under the constitutional provision by requiring revenue bills to originate here, where the big States are represented. In the next place it was agreed that Representatives were to be allowed the big States in Congress in proportion to their population; that the "whole number of free persons" should be counted and that they should be allowed Representatives on that basis. A further provision of the compromise was that the little States should be given equal representation with the big States in the Senate of the United States.

The Constitution was made possible because of that compromise in which all agreed to give to the big States what they have under this provision of the Constitution which means exactly what it says. The little States to-day get the benefit of that compromise. Over half the population of the United States is in 10 big States and less than half is in the other 38 States. Those 10 big States have only 20 Senators in the Senate of the United States. Those 38 little States have 76 representatives in the Senate. In other words, the little States of this country have more than a 10 per cent advantage in electing the President of the United States, in disregard of their population. Those little States have more than a 3 to 1 advantage in the Senate of the United States. If we want to abandon the constitutional methods of apportionment, then it ought to be done on an equitable basis. If it is to be placed on a basis of citizenship, then let us seek an equal basis of citizenship. Give to the great State of New York the number of Senators to which she should be entitled according to her population.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. FENN. Mr. Chairman, I yield the gentleman five minutes more.

Mr. LEA of California. If the State of New York was given equal representation in the Senate on a basis of citizenship, of its population, New York would have nine Senators in the Senate instead of two. California would have four Senators in the Senate of the United States if we establish equality of representation based on citizenship.

Mr. O'CONNOR of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. LEA of California. Not now.

Mr. GREEN. Mr. Chairman, will the gentleman yield?

Mr. LEA of California. After I complete this statement. If we had equal representation based on citizenship, the big States would be in more favorable positions than they are to-day, more favorable in their power in Congress, and more favorable by more than 10 per cent in the election of the President of the United States.

This is a representative form of Government. The fundamental idea of representation is that somebody is represented, and the one chosen is selected by consent of the one represented. Who represents the aliens, who represents the infants of the country, who represents the two-thirds of the people of the United States who do not go to the polls on election day? The only people who actually consent to our representation of them are the voters. They are the only people who get the right to choose a representative. Two-thirds of the population of the United States do not vote, either because they do not choose to, or because they are without the legal right. Among that two-thirds of the population are the aliens of this country. Who represents them to-day? We represent them, as we represent the voteless infants. We represent them by the consent of the law and not by their own consent. We are here as the representatives of States. We are not here to represent groups. The object of this Government is not to take care of groups. The object of this Government is to take care of every man, woman, and child within the confines of this Republic. [Applause.] When we count the citizens, the infant is a citizen, but he does not consent to representation.

The only complete, comprehensive basis for representation in this Congress is the population of the country, and it was upon that specific condition that the ratification of the Constitution of the United States was made possible. I yield now to the gentleman from Florida.

Mr. GREEN. The gentleman stated that New York would have some nine Senators if counted according to population. I am wondering if the gentleman has calculated the number of Members of the House, for instance, New York would lose in the event the aliens are eliminated from the count?

Mr. LEA of California. I understand that New York would lose four Representatives in the House and on that basis would gain seven Senators.

Mr. GREEN. Likewise, then, we may say that four Representatives now representing aliens in New York would be distributed among the other States of our old, steady, American population. Which is the better, to represent the founders of our Nation and the old, steady, American population or the aliens who are here by the fly-by-night method?

Mr. LEA of California. Let us see what that means. There are one thousand times one hundred and twenty thousand people in the United States. One hundred and twenty thousand people in a district in the city of New York, if you please, equals only 120 American citizens in the State of Kansas or any other State. So far as we have an alien population proportionately distributed, it equalizes itself between the States. A certain percentage of equalization is gained among the States for that reason, but 120,000 in New York means only 120 Americans in the State of Kansas. If you base this representation on citizenship, it means the inequality of populations in the districts of the country, one district having 250,000 and, by the law of the land, another district having perhaps 350,000. [Applause.]

I shall not cast my vote on this legislation with the idea of favoring one section of the country at the expense of another

section. I will not cast my vote on the supposition that one section or one State in the country is any better than any other State or section. A Government of equal rights can not flourish on the assumption of State or sectional superiority. It can not flourish on the assumption that one class or section of the country is entitled by its superior virtue to consideration over any other section of the country.

If you take representation from six States on a basis of eliminating aliens from competition, you do not distribute the advantage to the other 42 States of the Union. Instead of that, you redistribute representation to fractional numbered districts in 10 States, because of a small difference in the basis of apportionment.

Much less than 5 per cent of the population of this country is unnaturalized aliens. Their concentrated population in some areas creates the situation we are discussing.

The elimination of the enumeration of aliens for the purposes of apportioning Members of Congress does not deprive the alien of any right he now enjoys. The alien does not vote or select Representatives to Congress in any of the States at the present time. If you adopted the proposed amendment, you would not deprive the alien of any right he enjoys at present.

You would place on the representatives of some districts, however, the burden of acting for a population far in excess of the average district represented in Congress.

Adopt this amendment and you do not give any additional rights to American voters. You simply make a slightly different distribution of the voting powers among those who are already citizens of the country. You simply shift powers between American citizens but take no power from the alien and give it to American citizens. The result would be some gross inequalities in the population of districts represented.

The question, however, before this House is not whether or not aliens should be enumerated for the purpose of apportioning representatives. The question is whether or not we are going to comply with the plain provisions of the Constitution. The interpretation of the Constitution proposed is fictitious and unnatural. If substantial provisions of the Constitution can be frittered away by such methods of interpretation then our Constitution means little or nothing. Its real protection of American rights is at an end and subject to be varied or nullified at the whim of Congress.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. RANKIN. Mr. Chairman, I ask unanimous consent that all Members who speak on this bill be permitted to revise and extend their remarks.

The CHAIRMAN. The Chair doubts whether that can be done in committee.

Mr. FENN. Mr. Chairman, I yield 10 minutes to the gentleman from Massachusetts [Mr. TINKHAM].

Mr. TINKHAM. Mr. Chairman, I desire to give notice that when the bill is considered in the committee I will offer an amendment to section 1, as follows:

Page 1, line 4, strike out the word "and," and after the word "mines" insert a comma and the following: "and the number of inhabitants in each State being 21 years of age and citizens of the United States, whose right to vote at the election next preceding such census for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof has been denied or abridged except for rebellion or other crime."

And, if that is adopted, two other amendments perfecting the bill, as follows:

Page 5, line 20, strike out the word "and," and after the word "mines" insert a comma and the following: "and to the denial or abridgment of the right to vote."

Page 17, line 1, after the word "taxed," insert the following: "and the number of inhabitants in each State whose right to vote has been denied or abridged."

We are discussing a decennial census and apportionment bill based upon Article I, section 2, which reads:

* * * The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of 10 years, in such manner as they shall by law direct * * *.

And upon the fourteenth amendment, section 2, which reads:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislatures thereof, is denied to any of the male inhabitants of such State, being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crimes, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such State.

Section 22 of the proposed legislation provides in the language of the Constitution "that the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed," but it does not provide for the carrying out of the mandatory direction of the fourteenth amendment of reducing representation in accordance with disfranchisement.

The proposed amendment provides for the carrying out of the provisions of the constitutional amendment in full in the most practical way possible, namely, the collection of statistics to ascertain as nearly as can be the number of persons who are disfranchised.

Without providing for the reduction of representation in proportion to disfranchisement the unamended bill is a plain, flagrant nullification of the Constitution. Without a reduction of representation based on disfranchisement the House of Representatives is unconstitutionally organized in lawless disregard of a mandate in the Constitution; presidential elections are unconstitutional also, as the number of presidential electors is based upon the number of Representatives in the House.

The Constitution is the supreme law of the land. Is this committee going to select what parts of the Constitution it will enforce and what parts it will not enforce?

The Republican platform contained the following statements:

We reaffirm the American constitutional doctrine as announced by George Washington in his Farewell Address, to wit:

"The Constitution, which at any time exists until changed by the explicit and authentic act by the whole people, is sacredly obligatory upon all."

We also reaffirm the attitude of the American people toward the Federal Constitution as declared by Abraham Lincoln:

"We are by both duty and inclination bound to stick by that Constitution in all its letter and spirit from beginning to end. I am for the honest enforcement of the Constitution. Our safety, our liberty, depends upon preserving the Constitution of the United States, as our forefathers made it inviolate."

When the bill is before the committee and the amendment is offered the question will be whether or not the Constitution is considered sacredly obligatory upon all; whether or not the House of Representatives "are by both duty and inclination bound to stick by that Constitution in all its letter and spirit from beginning to end"; and whether or not the House of Representatives are "for the honest enforcement of the Constitution."

The President, in his speech of acceptance in August last, stated:

Whoever is elected President takes an oath not only to faithfully execute the office of the President, but that oath provides still further that he will, to the best of his ability, preserve, protect, and defend the Constitution of the United States.

In his inaugural address the President stated:

* * * Our whole system of self-government will crumble either if officials elect what laws they will enforce or citizens elect what laws they will support. * * *

In his address at the annual luncheon of the Associated Press at New York on April 22, the President said:

What we are facing to-day is something far larger and more fundamental—the possibility that respect for law as law is fading from the sensibilities of our people. * * *

* * * I am wondering whether the time has not come, however, to realize that we are confronted with a national necessity of the first degree, that we are not suffering from an ephemeral crime wave, but from a subsidence of our foundations.

Let me remind the House that they have taken the same oath as the President to "preserve, protect, and defend the Constitution of the United States"; that they may not elect which parts of the Constitution shall be enforced and which parts of the Constitution shall not be enforced; that if they do, our system of self-government will crumble here and now. If "respect for law as law is fading from the sensibilities of our people" it is because of the example set in the House of Representatives. It is here where the "subsidence of our foundations" is taking place.

It has often been said by those who defend failure to reduce representation in accordance with the terms of the fourteenth amendment that the fifteenth amendment superseded or nullified

the fourteenth amendment. This is not true. The falsity of this claim is proved by the decisions of the Supreme Court in the Slaughterhouse cases (1872, 83 U. S. 36) and in Hodges *v.* United States (1906, 203 U. S. 1). In the first case the court stated:

Before we proceed to examine more critically the provisions of this amendment [the fourteenth amendment], on which the plaintiffs in error rely, let us complete and dismiss the history of the recent amendments, as that history relates to the general purpose which pervades them all. A few years' experience satisfied the thoughtful men who had been the authors of the other two amendments that, notwithstanding the restraints of those articles on the States and the laws passed under the additional powers granted to Congress, these were inadequate for the protection of life, liberty, and property, without which freedom to the slave was no boon. They were in all those States denied the right of suffrage. The laws were administered by the white man alone. It was urged that a race of men distinctively marked as was the negro, living in the midst of another and dominant race, could never be fully secured in their person and their property without the right of suffrage.

Hence the fifteenth amendment, which declares that "the right of a citizen of the United States to vote shall not be denied or abridged by any State on account of race, color, or previous condition of servitude." The negro having, by the fourteenth amendment, been declared to be a citizen of the United States is thus made a voter in every State of the Union.

We repeat, then, in the light of this recapitulation of events, almost too recent to be called history, but which are familiar to us all, and on the most casual examination of the language of these amendments no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the fifteenth amendment, in terms, mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race, and designed to remedy them as the fifteenth.

In Hodges against United States we read:

At the close of the Civil War, when the problem of the emancipated slaves was before the Nation, it might have left them in a condition of alienage, or established them as wards of the Government, like the Indian tribes, and thus retained for the Nation jurisdiction over them, or it might, as it did, give them citizenship. It chose the latter. By the fourteenth amendment it made citizens of all born within the limits of the United States and subject to its jurisdiction. By the fifteenth it prohibited any State from denying the right of suffrage on account of race, color, or previous condition of servitude, and by the thirteenth it forbade slavery or involuntary servitude anywhere within the limits of the land. Whether this was or was not the wiser way to deal with the great problem is not a matter for the courts to consider. It is for us to accept the decision, which declined to constitute them wards of the Nation or leave them in a condition of alienage where they would be subject to the jurisdiction of Congress, but gave them citizenship, doubtless believing that thereby in the long run their best interests would be subserved, they taking their chances with other citizens in the States where they should make their homes.

Also, John S. Wise, in his book on Citizenship (1906, p. 231), states:

The argument has been made that the power granted to Congress by the fourteenth amendment to reduce representation for disfranchisement was repealed by the adoption of the fifteenth amendment. The fallacy of this contention is apparent at a glance. The fifteenth amendment prohibits the States from denying or abridging the right of suffrage for a single cause, viz, race, color, or previous condition. The fourteenth amendment authorizes the reduction of representation if the right of suffrage is denied or abridged for any cause.

The Supreme Court has repeatedly construed and commented upon the fourteenth and fifteenth amendments, and one can find no suggestion in any decision in support of the allegation that the fifteenth amendment repealed the fourteenth amendment in whole or in part.

The fifteenth amendment did not repeal the fourteenth amendment, first, because there is no inconsistency between the two, the latter being cumulative and supplemental, not repugnant, to the other; second, because to forbid an act does not repeal a penalty otherwise laid upon it; and third, because the judicial remedy, under the fifteenth amendment, may be sought by any aggrieved citizen, and perhaps only by a citizen, while the remedy by reduction of representation, under the fourteenth amendment, is a public remedy, enforceable only by Congress, which the additional private remedy under the fifteenth amendment can not be held to supersede or disturb.

In commenting upon the fourteenth amendment, the Constitution of the United States of America, as amended to December 1, 1924, annotated—Sixty-eighth Congress, first session, Senate Document 154, page 742, under amendment 14, section 2, "Reduction of State's representation in Congress"—states:

Congress has never exercised the power conferred upon it by this section of reducing the representation of a State in the House of Representatives, but there can be no question of its power or its right to do so. Of its duty to do so, it alone is the judge. The amendment places the responsibility of enforcing its provisions upon that body. (Watson on the Constitution, Vol. II, p. 1653.)

Watson precedes the above statement with the following:

The language of the section recognized the power but not the right of a State to abridge the right of suffrage. There is a great difference between the exercise of a power and the exercise of a right. Sovereignty can not confer the right to commit a wrong, but it may confer the power to do so. But if a State should deny its electors the right to vote at any election for any such officers, or in any way abridge such right, then the section names a punishment which Congress may inflict upon the State for such denial or abridgement, and provides that it shall be a reduction of the State's representation in the National House of Representatives according to the manner provided in the section.

Andrew's New Manual of the Constitution—1916, pages 278, 279—in discussing the second section of the fourteenth amendment, under Inequality in Representation, reads:

The number of Representatives being in proportion to the whole population of the States, including those that are colored, if suffrage were denied to this class the former slave States would have delegations in Congress much larger, in proportion to the number of voters, than the original free States. To remedy this inequality was the object of this second section. By it the States were not required to allow the blacks the right of suffrage; but if they did not allow it their representation in Congress was to be proportionately diminished. They might take their choice between general suffrage and more Congressmen or white suffrage and fewer Congressmen.

Shall we make true what Rudyard Kipling said of the American spirit?—

That bids him flout the law he makes,
That bids him make the law he flouts,
Till dazed by many doubts he wakes
The drumming guns that have no doubts.

Allow me to read the following correspondence which I have had with the President of the United States and the Attorney General on the subject of the nullification of the fourteenth and fifteenth amendments:

APRIL 6, 1929.

MY DEAR MR. PRESIDENT: Permit me respectfully to draw your attention to the fourteenth amendment and the fifteenth amendment of the Constitution. The former amendment makes negroes citizens of the United States and provides that the basis of representation shall be reduced in proportion to existing disfranchisements in any State, and the latter amendment prohibits any State from giving preference in the matter of suffrage to one citizen over another on account of race, color, or previous condition of servitude, and the duty of enforcing these amendments rests with the Congress and the President.

No laws have been passed to enforce these amendments. They are now wholly and grossly nullified in many States. Negroes are counted in the population for purposes of representation in the lower House of Congress and then disfranchised, giving those States disproportionate representation, unfair to the other States of the Union, and thereby making elections to the House of Representatives and of a President illegal and unconstitutional.

The Republican platform upon which you were elected states:

"We reaffirm the American constitutional doctrine as announced by George Washington in his Farewell Address, to wit:

"'The Constitution, which at any time exists until changed by the explicit and authentic act by the whole people, is sacredly obligatory upon all.'

"We also reaffirm the attitude of the American people toward the Federal Constitution as declared by Abraham Lincoln:

"'We are by both duty and inclination bound to stick by that Constitution in all its letter and spirit from beginning to end. I am for the honest enforcement of the Constitution. Our safety, our liberty, depends upon preserving the Constitution of the United States, as our forefathers made it inviolate.'"

In your speech of acceptance as the Republican candidate for President in August last, you stated:

"Whoever is elected President takes an oath not only to faithfully execute the office of the President but that oath provides still further that he will, to the best of his ability, preserve, protect, and defend the Constitution of the United States."

In your inaugural address, you stated:

"* * * Our whole system of self-government will crumble either if officials elect what laws they will enforce or citizens elect what laws they will support. * * *."

The Constitution of the United States is the supreme law of the land.

In your inaugural address, you also stated:

"It appears to me that the more important further mandates from the recent election were the maintenance of the integrity of the Constitution; * * *."

In your speech of acceptance last August, in your inaugural address, and in a recent public statement, you propose a national investigation of the enforcement of the eighteenth amendment of the Constitution.

Permit me respectfully to state that if you are to obey your oath of office and to the best of your ability "preserve, protect, and defend the Constitution of the United States," if "our whole system of self-government will crumble" "if officials elect what laws they will enforce," and if one of "the more important further mandates from the recent election" was "the maintenance of the integrity of the Constitution," you must either recommend to the Congress the passage of laws to enforce these amendments or refer the enforcement of them to your national investigating committee.

Justice and constitutional rights should not be denied to citizens because they are not politically organized nor in possession of great wealth.

Permit me also to draw to your attention the great distinction in the adoption of the fourteenth and fifteenth amendments and the eighteenth amendment.

It has well been said by great statesmen that laws should be crystallized public opinion.

The fourteenth and the fifteenth amendments were placed in the Constitution as the result of a great Civil War, were in conformity with the principles of the Constitution and its proper functions, and added a greater total of freedom and liberty than existed before their adoption.

The eighteenth amendment was placed in the Constitution under a subterfuge as a war measure and by the expenditure of a vast amount of money. It is not in conformity with the principles of the Constitution and its proper functions, and instead of adding to the total of freedom and liberty it has established a bureaucratic tyranny—yes, a despotism of the most offensive character, and has taken away from citizens one of their most cherished rights, the right of governing individually their private conduct, and given this right to a political system which daily becomes more corrupt and brutal.

Respectfully yours,

GEORGE HOLDEN TINKHAM.

APRIL 13, 1929.

The Hon. WILLIAM D. MITCHELL,

Attorney General of the United States, Washington, D. C.

MY DEAR MR. MITCHELL: Inclosed is copy of a letter which I have sent to President Hoover in relation to the nonenforcement of the fourteenth and fifteenth amendments of the Constitution.

I suppose naturally the President has referred or will refer to you, his legal adviser, my communication, but in the event that he should not do so, I am taking the liberty of transmitting this copy to you, together with a full statement supporting the contentions contained therein, which did not accompany my letter to the President, but which I think ought to be in your possession.

Permit me to draw to your attention the following:

First. That these amendments are now wholly and grossly nullified in many States.

Second. That because of the nonenforcement of these amendments the integrity of the Constitution is not being maintained.

Third. That the President can not choose what parts of the Constitution he will enforce and what parts of the Constitution he will not enforce.

Fourth. That the oath of office of the President provides that he will to the best of his ability preserve, protect, and defend the Constitution of the United States.

Fifth. Therefore, should the President not attempt to enforce the fourteenth and fifteenth amendments, he is a party to their nullification, violates his oath of office, and is subject to impeachment as committing a high crime and misdemeanor.

Very truly yours,

GEORGE HOLDEN TINKHAM.

WASHINGTON, D. C., *April 17, 1929.*

Hon. GEORGE HOLDEN TINKHAM,

House of Representatives.

MY DEAR CONGRESSMAN: I am in receipt of your letter of the 13th instant, inclosing a copy of a communication which you state you have sent the President bearing upon the enactment by the Congress of statutes to enforce the constitutional amendments to which you call attention.

Respectfully,

WILLIAM D. MITCHELL,
Attorney General.

HOUSE OF REPRESENTATIVES,
Washington, May 4, 1929.

The Hon. WILLIAM D. MITCHELL,

Attorney General of the United States, Washington, D. C.

MY DEAR MR. MITCHELL: Your communication of April 17 was duly received. The irresistible conclusion to be drawn from it would seem to be that because Congress has passed no law to enforce either the fourteenth or the fifteenth amendment of the Constitution the President is under no constitutional obligation to address himself to their enforcement; that the only constitutional duty of the President is to enforce such laws as Congress may pass.

The constitutional duty of the President is plainly much greater than this.

Allow me to draw your attention to (1) section 1 of Article II of the Constitution, which provides that the President must take an oath that he will "to the best of my ability preserve, protect, and defend the Constitution of the United States; (2) section 3 of Article II, which provides: "He [the President] shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient"; and (3) the statement of the President in his inaugural address: "It appears to me that the more important further mandates from the recent election were the maintenance of the integrity of the Constitution; * * *."

The fourteenth and fifteenth amendments are notoriously nullified in many States of the Union, and if the President of the United States does not recommend their enforcement to the Congress, and, further, refuses to refer the question of their enforcement to his proposed national investigating committee, he is electing what parts of the Constitution shall be enforced and what parts shall not be enforced. He is a party to the destruction of the integrity of the Constitution. By his example he is bringing about the very thing against which he protested in his inaugural address when he said: "Our whole system of self-government will crumble either if officials elect what laws they will enforce or citizens elect what laws they will support. The worst evil of disregard for some law is that it destroys respect for all law."

As you well know, the Constitution has been declared repeatedly to be the supreme law of the land.

The President manifestly can not abandon any part of the Constitution nor nullify any part of it by inaction without violating his oath of office.

Those who demand that the law be obeyed should obey the law themselves, and those who are their legal advisers should counsel its obedience.

Very truly yours,

GEORGE HOLDEN TINKHAM.

The CHAIRMAN. The time of the gentleman from Massachusetts has expired.

Mr. TINKHAM. Mr. Chairman, may I have five minutes more?

Mr. FENN. I am sorry. All the time has been allotted.

Mr. Chairman, I yield five minutes to the gentleman from Michigan [Mr. CLANCY].

The CHAIRMAN. The gentleman from Michigan is recognized for five minutes.

Mr. CLANCY. Mr. Chairman and members of the committee, the proposed reapportionment is being opposed by an effort to include an amendment for the exclusion of aliens. The same effort at the other end of the Capitol got a decisive drubbing by a vote of 48 to 29 the other day. The two admittedly greatest constitutional lawyers in that body, one a Democrat, THOMAS J. WALSH, of Montana, and the other a Republican, WILLIAM E. BORAH, of Idaho, stood shoulder to shoulder, stood like rocks, arguing that this amendment is clearly unconstitutional. The legislative counsel of the Senate, an impartial and scientific functionary, also handed down a sled-length conclusion that this amendment is absolutely unconstitutional.

ALIEN CLAUSE SPONSORED BY CROOK

Referring to this alien exclusion amendment, there was a question raised by the gentleman from Wisconsin [Mr. SCHAFER] as to who fathered this idea. In the hearings before the Judiciary Committee of the House on February 13, 14, and 18, 1929, it is made very clear that the father of this idea was William H. Anderson, the former Anti-Saloon League superintendent of New York.

I read from the published hearings on page 21. Mr. Anderson is claiming the fatherhood of the amendment. He said:

I say to you very frankly my interest was the prohibition interest. I was connected with the Anti-Saloon League at the time when I first made this proposal and brought it up in 1921. * * * But it did originate with me in my own mind and, so far as I know from the record, I am the first person who got it into the Congress of the United States. I say that solely to negative any idea there is an ulterior idea behind it, aside from the natural benefit that would flow to the prohibition

cause, because most of those Congressmen that would be cut out are opposed to the prohibition policy.

Now, William H. Anderson was a thief, a crook, an embezzler, and a hypocrite. He was sentenced to three years in the penitentiary for embezzlement, and yet he is the father of this clause. It is not only unconstitutional, but a taint is cast on its parentage.

THE APPEAL TO HATRED OF ALIENS

The opposing gentlemen hope to cripple this bill by appealing to your hatred of aliens and thus forestall the reapportionment. My dear friend the gentleman from Mississippi [Mr. RANKIN] has an astute mind and unusual oratorical ability. He has displayed these fully to-day. Aided by others he has succeeded in killing the reapportionment for something like seven or eight years, until the delay has become a national scandal. But I doubt that Mr. RANKIN fully quoted to-day Senator WALSH of Montana when he referred to the distinguished Senator as giving his opinion that the Supreme Court would not overrule the Congress if it included an amendment excluding aliens.

If I remember correctly Senator WALSH said that the difficulty would be in getting this measure before the Supreme Court to which, as I recall, Senator BORAH replied that he could get it into the Supreme Court if he thought it should be gotten there.

MICHIGANDERS ARE GOOD AMERICANS

Now, my friend the gentleman from Mississippi has made an appeal to-day to all of us as Americans, and he has spoken contemptuously of the Michigan Members of Congress, endeavored to cast opprobrium—that was evidently his intention—upon the Michigan delegation when he mentioned it to-day. He also included the gentleman from Wisconsin [Mr. SCHAFER] in the Michigan delegation.

I can only say to the gentleman from Mississippi that my family only had 11 men and boys in the Revolutionary War, shortly after which this first article of the Constitution was written. I hope he will not construe it an additional taint on my blood that my mother's father and brother were in the Civil War, and my mother, even to her dying day, never mentioned the Civil War without tears. So I feel I can speak as an American, and a few millions of other Michiganders can also speak as good Americans. They are as good as I am.

ALIENS OVERESTIMATED

The gentleman will find there are not so many aliens in Detroit and Michigan as he may think. And, after all, they make good citizens and good residents. You have seen estimates that there are, for instance, 300,000 aliens in Detroit, based on the 1920 census, but since 1920 many things have happened which have operated to cut down the number of aliens.

In the first place, our great factory owners, including Henry Ford, will not give a man employment if he is an alien, so that aliens make efforts to become citizens as soon as possible.

In the second place, aliens are deported on very flimsy grounds sometimes, and, therefore, the aliens take steps on that ground to become citizens.

The other day I had the case of a man who had been in this country 23 years. He was to become an American citizen in a few days, when a warrant of deportation was issued against him on the sole and unsupported testimony and evidence of a criminal. I have a recent telegram from the United States naturalization district director at Detroit, Hon. O. T. Moore, who knows more about the alien situation there than anybody in Detroit, and instead of estimating the number of aliens there at 300,000 he estimates them at a number considerably below 100,000.

With the immigration act of 1924 operating, fewer and fewer aliens come into the picture. Most of these alarming figures are based upon the 1920 census, before the aliens were cut down, and others made citizens.

I feel that this amendment for the exclusion of aliens is going to fail. However, some foes of reapportionment did succeed in tying to the bill a provision providing that enumerators and supervisors should be placed under civil service. On this point I was very happy to note the attitude of the gentleman from Mississippi [Mr. RANKIN], and his statement that he would oppose this amendment.

KILL THE CIVIL SERVICE CLAUSE

I happen to be a member not only of the Census Committee, but of the Civil Service Committee. The Civil Service Commission takes the natural attitude, which it has always taken.

The Civil Service Commission thinks it can handle this job, and in a letter from the commission, which I dare say will be read on the floor of the House before we are through with this debate, they refer to the fact that the Civil Service Commission participated in the thirteenth decennial census, which was the census just before the last one.

The Director of the Census maintains in a letter to me that the Civil Service Commission did not take an important part in that census, and that in so far as they did participate they crippled the census. The Director of the Census furnished me with a full set of the directions to the supervisors at that time. From those directions I read the following:

The director will prescribe at the present census the same kind of a test for enumerators as was required in 1900.

That is before there was any civil-service requirement. It is also specifically stated that—

This test is not in any sense a civil-service examination, and the members of civil-service boards and the postmasters act merely as your representatives to see that there is no assistance given to any candidate.

CIVIL SERVICE CRIPPLES CENSUS

The Director of the Census, W. M. Steuart, has had the very highest compliments paid to him by leaders of the House and Senate as an able, honest, scientific, and nonpartisan bureau officer. I was connected with the Department of Commerce myself for four years and can truthfully testify that Mr. Steuart enjoyed the very finest reputation as a public officer. In a letter to me, under date of June 3, 1929, he said:

The bill has been changed by the Senate so as to require all appointments of the field force to be under civil service laws and regulations. * * * I can not help but believe that this change was made without due consideration of the temporary nature and character of the work required of the census field force. * * * The success of the enumeration depends upon the ability of the individual to secure answers to census inquiries. A pleasing personality and experience in contact with others are important requirements. These can not be determined by any civil-service examination. Furthermore, the enumerators must be residents of the particular ward, township, or precinct in which they will be employed. Manifestly, it would be impossible under civil-service requirements to secure a sufficient number of these persons properly qualified and properly located in time to take the census. Many of them would die and some of them would get new jobs before the work commenced. If during the progress of the work the supervisor, enumerator, special agent, or other field employee does unsatisfactory work it is necessary to dispense with his services promptly. The authority to discharge these people should be left with the director without complications that will possibly arise through the application of civil-service regulations. A vacancy must be filled promptly. This can be done only through the application of arbitrary methods. The compensation of the supervisors is fixed. They will receive in the neighborhood of $2,000.

The total depends upon the number of people enumerated, and number of farms for which enumerators collect satisfactory returns. The supervisors will be required to announce the total population and the number of farms in each political subdivision of their districts as rapidly as the enumerators finish their work. It will be impossible for the bureau to select through civil-service methods a suitable number of properly qualified supervisors to begin the work of census taking promptly on the census date. The enumerators are paid on a per capita basis.

THE NEW DATE IS CONSTITUTIONAL

The gentleman from Mississippi [Mr. RANKIN] has complained about the date for this census being set two months earlier than the last census. The last census began on January 1, and on recommendation of the experts in the Census Bureau and Department of Agriculture, the coming census is due to begin on November 1.

A. J. Hirsch, chief clerk of the Census Bureau, has informed me just to-day that it was necessary in order to make a better census to set the date ahead two months.

The solicitor of the Department of Commerce handed an opinion to the Census Bureau, according to Mr. Hirsch, saying that the change of date is legal and did not violate the constitutional provision providing for the census. He said they moved the date up two months because the roads would be better and would allow the enumerators to get about much more easily than when traveling in snow and icebound roads. The weather would be better, there would be more population of residents at home, as they would not have started away for the winter vacation and had returned from their summer vacation. Because of crops and weather, there would be more people on farms. This was the reason for change of date.

FURTHER DELAY IS CRIMINAL

President Herbert Hoover regards the reapportionment as of most tremendous importance, and in his message to Congress relative to the President's special session he urged that the Congress settle the reapportionment question.

Not only the necessity for reapportionment but the tremendous injustice done by failure to reapportion during the past eight years was set forth in the Senate report of this session on reapportionment.

I quote from that report, as follows:

Great American constituencies have been robbed of their rightful share of representation not only in the Congress itself but also in the presidential Electoral College. On the prospective basis of the next census, more than 30,000,000 people are relatively disfranchised as a result of this lapse in a fundamental constitutional function. Already we have had two Presidencies and four Congresses elected out of an anticonstitutional source. On the basis of census estimates it is safe to say that reapportionment, with the present size of the House maintained, would affect 23 seats in the House of Representatives and 23 votes in the presidential Electoral College. So large a factor of misrepresentation is a travesty upon representative democracy, a flagrant mockery of constitutional equalities, an ugly hazard to domestic tranquallity, and an insufferable affront to victimized States.

Mr. RANKIN. Mr. Chairman, I yield 10 minutes to the gentleman from Missouri [Mr. LOZIER].

Mr. LOZIER. Mr. Chairman, ladies, and gentlemen, if we pass this bill in its present form I think we will do violence to the genius and spirit of our Constitution. If this bill is enacted without amendment we will pass on to the Executive department powers which our constitutional fathers vested in Congress and never dreamed would be transferred to the Executive branch of our Government. Frequently I hear men on the floor of this House, and on the platforms and elsewhere advocate laws that strip Congress of her constitutional powers and transfer the legislative functions of our Government from Congress to the chief Executive.

Any man who has given any study to our Federal Constitution knows that our scheme of government is built not around the President, not around our judiciary, but around Congress. Four out of every five words in the Constitution have reference to the powers and prerogatives of Congress. Congress is the central figure in our constitutional government.

This is primarily and essentially a government of the people reflecting their views through and by Congress. There is a profound philosophy underlying, permeating, and vitalizing our scheme of Congressional government. There is a reason why the makers of the Constitution built our Government and free institutions around Congress and not around the Executive.

When our Constitution was written the world was just emerging from a period of despotism, autocracy, and kingcraft. In all the ages of the past when men have sought to have a part in government, when they battled for freedom, when they struggled to establish their right to have a part in the enactment and administration of laws they have been opposed by the Crown or executive departments. From the time the curtain first went up on human history, men have fought for freedom and self-government. In all these struggles and in every age and in every government the legislative branch has fought the battles of the common people, and resisted the tyranny of the Crown. In every great contest for human freedom and self-government, the legislative branches of government have almost without exception championed the cause of the people against kings and princes who oppressed the people. Realizing that the battles for human liberty and self-government in the past had been fought by the representatives of the people in congresses, in legislatures, in assemblies, and in parliaments, our constitutional fathers, knowing that their representatives in Congress would be responsive to their will, formed a nation which very largely provided for government by Congress. Indeed Congress is the foundation of our free institutions. Executive and judicial departments were created, not to override, but to aid Congress in reflecting the will of the people.

I believe it was Edmund Burke who said, "Every battle for human freedom has been fought around the standard of taxation." There is no nation that has tasted the blessings of free government except after an age-long contest with kings who oppressed the people by unjust levies of taxes. In the struggle of the people for representative government, their chief ally and support has always been the legislative branch of government, whether called a parliament, congress, assembly, or by any other name.

The contest for our independence was inaugurated and carried to a successful conclusion by our Continental Congress, by our house of burgesses, by the New England town meetings, and other bodies chosen by the people, speaking their language and reflecting their will.

Those who wrote our Federal Constitution and conferred on Congress almost plenary powers, expected Congress to exercise those constitutional functions and not delegate them to the executive departments.

The reapportionment of representation is a duty and prerogative of Congress, and Congress should not shirk that responsibility or ask the Executive branch of our Government to relieve us of this responsibility.

May I say just a word in reference to the mechanics of this bill? It is loosely drawn, and I can not see how it can be administered. The bill as drawn would leave us without any reapportionment in the event Congress fails to make reapportionment in its Seventy-second session. Why do I say this? I will tell you in a few words. We frequently hear the statement made that the apportionment of 1911 was made by the major-fraction formula. It was not. So far as the act itself is concerned it was not made by this or any other of the several methods about which we hear so much.

The act of August 8, 1911, makes no reference whatever to the major-fractions formula or to any other method. That act merely provides that after March 3, 1913, the representation in Congress shall be apportioned among the several States as follows, and then follows a list of the States with the number of Representatives allotted to each, amounting to 433, followed by a provision to the effect that if Arizona and New Mexico become States each shall have an additional Representative, bringing the aggregate membership up to 435. The bill is absolutely silent as to how or by what method the allocation of representation was made in 1911. It makes no reference to any method or formula. It affords no explanation of how or why this particular allocation of Representatives was made. Nowhere can be found the slightest reference to any method or mathematical computation by which the 435 Representatives were assigned to the 48 States. If the major-fractions method or any other method was used, it was in the dark by some clerk, and the computations were not mentioned or referred to in the bill.

Suppose you examine the act of August 8, 1911, making reapportionment under the census of 1910, and also examine the proceedings of Congress in relation to this act, you would be absolutely unable to learn from the RECORD what method was used in making the last apportionment. So far as the RECORD shows, the allocation of Representatives was made on an arbitrary basis and without the use of the major-fractions method or any other hard and fast formula.

If we pass this bill and the Congress does not thereafter pass a reapportionment act after the population is ascertained by the next census, what will happen? Let us see. On page 17 of this bill, beginning in line 12, I read, "If the Congress to which the statement required by this section is transmitted fails to enact a law apportioning Representatives among the several States, then each State shall be entitled, in the second succeeding Congress and in each Congress thereafter until such apportionment law shall be enacted or a subsequent statement shall be submitted as herein provided," to what? "To the number of Representatives shown in the statement based upon the method used at the last preceding apportionment."

There is where you get in trouble. What was that method? You can not put your finger upon a line in the act of August 8, 1911, which shows that any method or formula was used in apportioning representation in 1911 among the several States.

You may say that somebody in a back room of the Census Bureau, some statistician or mathematician, figured this out and in making the computation he used the so-called major-fraction formula, but there is absolutely no word in the statute and no word in the record to which you can point to prove that any particular method or formula was used when the last reapportionment was made. There is absolutely no provision in the last apportionment bill or anywhere in the record to satisfy a court or the human mind in a legal way that this or that method was used when the present apportionment was made. And no subsequent Congress, or President, or Clerk of this House can put his finger on a word or line in the law of 1911 which authorizes him to go ahead and make an apportionment by the major-fractions method. The words "based upon the method used at the last preceding apportionment" are meaningless, because there is nothing to show that the major-fractions method or any other particular method was used in the last preceding apportionment.

But some one says that the major-fractions method was actually used in the last apportionment. This statement is not altogether accurate. The bill itself refers to no method. If any computation was made, it was in some out-of-the-way corner by some unknown clerk or mathematician. But the facts conclusively demonstrate that the major-fractions formula was not used, or at least accurately applied, in the 1911 apportionment. Some Representatives were allocated to certain States arbitrarily and in violation of the major-fractions method known to Daniel Webster and Edward Everett when they made their celebrated fight for representation based on major fractions.

The so-called major-fractions formula which you say was used by some Census Office clerk in 1911 in apportioning representation was not the major-fractions method advocated by Webster. The major-fractions formula advocated by Daniel Webster in 1832 and finally applied to the 1840 census was a very simple formula. It simply recognized major fractions and gave to each State an additional Representative, provided the State had more than one-half of the basic or ratio number.

The major-fractions formula which we are told was used in the 1911 reapportionment was a revised or an amplified form of the major-fractions formula, by which, as a result of an infinitesimal mathematical computations, they euchered certain States out of an additional Representative and gave certain States Representatives to which they were not entitled under the major-fractions method as formulated by Daniel Webster.

I want the gentlemen from Ohio to listen to what I am going to say, because, under the so-called major-fractions formula, you lost a Representative in 1911 to which you were entitled by reason of the size of your major fraction. You had a major fraction of 22.65. Under the major-fractions formula you would have been entitled to 23 Representatives because of the size of your major fractions; but no, when this bill came in, it contained a provision that Ohio should only have 22 Representatives, while Missouri, that had a major fraction of 15.64, was given an additional Representative. I was not in Congress at that time, and of course I do not know why or how, under the major-fractions method, Ohio, with a major fraction of 0.65, was denied an additional Representative, while my State, with a major fraction of 0.64, was given an additional Representative.

In making the 1911 apportionment, major fractions were disregarded in four States—Mississippi, New Mexico, Ohio, and Texas. Why were these States discriminated against? Ohio had a major fraction of 0.65, Mississippi a major fraction of 0.54, New Mexico a major fraction of 0.50, and Texas a major fraction of 0.51. Evidently there was some logrolling in making up the allotment of Representatives in 1911. The major-fraction method was not used in theory or fact, but a "cut and cover," "you tickle me and I'll tickle you" method was used. This bill will require the use of same methodless and arbitrary and discriminating plan used in 1911. If this bill becomes a law it will enjoin on those administering it to use the unjust arbitrary, and disfranchising methods resorted to in 1911.

Four States were denied their just representation under the "method used at the last preceding apportionment." And this bill says you must make the next apportionment by the method used in 1911, which wrongfully and arbitrarily took away from four States four Representatives and four electoral votes. I want to tell you, gentlemen, that when you come to administer the law you are about to enact, you will fail to find provision which will enable you to effectively carry out its purpose and effectuate the will of Congress, because you can search the former act and all the Federal statutes and you will find absolutely no reference in them indicating that the reapportionment of 1911 was under the major-fractions formula.

In fact, the 1911 apportionment was not made by any one method, but in many instances the allocation of Representatives was arbitrary and the result of trading and logrolling.

Mr. FITZGERALD. Will the gentleman yield?

Mr. LOZIER. Yes.

Mr. FITZGERALD. As an Ohio Member I am very much interested in what the gentleman has divulged and I am wondering if my friend would not consider the bill perfected, in that respect at least, if after the provision with respect to the plan followed in the last census there should be inserted the words "being the major-fractions formula."

Mr. LOZIER. You would be writing into the law something that did not exist, that which is not true, and referring to something that can not be found in the act of 1911, because the 1911——

Mr. FITZGERALD. I am merely asking if that would not clarify the matter and carry out the intention which we have, and if there are other matters which are loosely drawn, at least we can make them certain as we understand them.

Mr. LOZIER. I admit the suggestion of the gentleman from Ohio would help, but the point I am making is that this bill seeks to have the next apportionment made on a basis and by a method that is not referred to in the 1911 apportionment. This bill orders the next reapportionment to be made by a method that was used in 1911, when, as a matter of fact, the record is silent as to any such method and when in truth and fact no one recognized method was used in 1911. When you attempt to administer this act you will find in the 1911 act no reference to the major-fractions method or any other method, and you will find that in 1911 in apportioning Representatives to the several States the Congress of the United States merely listed the States and gave to each State a certain definite number of Representatives and said nothing about the method by which this apportionment was determined. You can not use the major-fractions methods because the act of 1911 is silent as to that and all other methods.

The CHAIRMAN. The time of the gentleman from Missouri has expired.

Mr. RANKIN. Mr. Chairman, I yield the gentleman five additional minutes.

Mr. LOZIER. Now, with reference to the counting of aliens. If the fathers of our Constitution had believed that in the course of 50 or 100 years we would have in this country from two to four million aliens who came over here to enjoy the benefits of our Government, yet declined to become citizens and accept the duties and responsibilities incident to citizenship; if they had known that we would have in America an undigested alien population of two, three, or four million people who are getting the benefits of our Government, the protection of our laws, and yet refusing to become naturalized citizens of this Republic, does any man here believe there would have been any hesitancy or any uncertainty as to what the writers of the Constitution would have done to meet a situation of that kind? If they could have foreseen this situation, they would undoubtedly have written into the Constitution a specific and unambiguous provision to the effect that these aliens who love their native lands better than the land that nurtures and sustains them shall not be counted in apportioning Representatives and electoral votes so long as they failed to take advantage of our naturalization laws and become citizens.

The great men who wrote our Constitution never dreamed that millions of men and women would come to our shores from foreign lands, take up their abode here, enjoy the protection of our laws, prosper under our benevolent institutions, and yet remain citizens of the nations from which they come.

I would not inflict any injustice on our alien population. I have a kindly feeling for all men and women who come to our land to live their allotted lives and who appreciate our free institutions. Our Government protects them in the possession and enjoyment of their lives and property. But I do not think that representation in the Congress and in the Electoral College should be based on those who are aliens and who do not think enough of our institutions to become naturalized citizens. Millions of foreigners have become naturalized and are good citizens, fine upstanding, forward-looking men and women. I am convinced that we can exclude aliens in apportioning Representatives without violating any constitutional provision. Foreigners who do not think enough of our country to become naturalized should be listed in the census but not for the purpose of being counted in apportioning Representatives.

Mr. ROMJUE. Will the gentleman yield?

Mr. LOZIER. I will yield to my colleague from Missouri.

Mr. ROMJUE. There seems to have been a good deal of division as to the interpretation put upon the word "person" used in the Constitution. It is admitted that there are two or three million aliens unlawfully in the United States, and yet some take a position against the proposed amendment and do not want to exclude aliens. Now, if they are unlawfully in the country can the gentleman distinguish for me between that and this proposition: Suppose half a million soldiers invade American territory from Mexico in time of war and another half million invade American territory from Canada, and we are in an international struggle—they might not be able to stay long, but they are here and here at a time when the consus is being taken. I ask the gentleman, Is there any distinction between enumerating the soldiers here from a foreign country and an alien here in violation of law?

Mr. LOZIER. Absolutely not. If a strict construction is to be placed on the Constitution and we are compelled to enumerate every person in the country, then we would have to enumerate the Mexican and Canadian soldiers that had invaded our territory and that were making war on us. And on the same principle we would have to enumerate the British ambassador, the ambassadors, ministers, and consuls from foreign nations and every other man within the borders of American territory, even if he be only a tourist or visitor. That would be foolish. That was not in contemplation by the men who wrote the Constitution and those who wrote the fourteenth amendment. The rule of reason must be written into the statute. You lawyers know that in construing a law or a constitution, you must take into account the object and purpose the framers had in view. The terms "persons" and "numbers" were only intended to refer to those who are parts of our national family, by birth or naturalization, and I maintain that only citizens of the Republic should be counted for the purpose of apportioning representation in Congress among the several States.

Mr. GIFFORD. Will the gentleman yield?

Mr. LOZIER. I yield.

Mr. GIFFORD. Even if an alien owns property and pays taxes, do not a thousand of them cause a Congressman really more trouble than a thousand ordinary American citizens?

Mr. LOZIER. Members of Congress very frequently do have a lot of work to do for aliens in departmental matters. But there are only a few aliens in my district and comparatively few in Missouri.

Mr. DENISON. Will the gentleman yield?

Mr. LOZIER. I yield to the gentleman from Illinois.

Mr. DENISON. Does not the gentleman think as a lawyer that even if they have not applied for citizenship that if they are here properly does the gentleman think they ought to be excluded?

Mr. LOZIER. If they have taken steps to become citizens, we might be justified in making an exception. If they have started proceedings to become naturalized, we are justified in assuming that they want to become citizens and probably no harm would be done by counting them for the purpose of apportioning representation. But if they have been here for years and have taken no steps to become naturalized, I do not think it either right or lawful to count them for the purpose of apportioning representation.

Between 20 and 30 seats in this House depend upon what provisions you write into this bill. Shall these seats be given to citizens, native and naturalized, or shall they be assigned to an alien population that does not have enough interest in our institutions to become naturalized?

By your vote you are about to determine where you are going to distribute these 20 or 30 Congressmen and the 20 or 30 electoral votes. By voting not to exclude aliens you are going to take 20 or 30 Congressmen and 20 or 30 electoral votes away from States that have native and naturalized populations and give them to States with large unnaturalized alien population. You are about to take representation in Congress and in the Electoral College away from foreign-born men and women who have become naturalized citizens and who have demonstrated their love for our institutions and give these Congressmen and electoral votes to foreigners who have refused to become citizens, though enjoying the protection and benefits of our Government. Nearly all the foreign-born population in my district are naturalized, and you can not find a better class of citizens anywhere. I am not willing to deny them representation in Congress and in the Electoral College and give it to aliens who are not naturalized and who live principally in the great cities. [Applause.]

The CHAIRMAN. The time of the gentleman from Missouri has again expired.

Mr. FENN. Mr. Chairman, I yield five minutes to the gentleman from Michigan [Mr. HUDSON].

Mr. HUDSON. Mr. Chairman, ladies and gentlemen of the committee, I am having placed before you two charts or maps in order to answer the question raised by the gentleman from Missouri [Mr. LOZIER] as to where these additional Representatives will be placed. He asked, Are they going to come from aliens or American citizens? Before I call your attention to the maps I want to read from the Congressional Directory the apportionment last year of the State of Missouri.

In the first district the population is 161,000—I am not reading anything below the thousands. In the second district the population was 165,000. In the third district the population is 151,000. In the fourth district the population is 176,000. In the sixth district it is 138,000; in the eighth district 138,000; in the ninth district 177,000. I will not take the time to read further. I think I have read enough to show you the ratio of population.

Now, I am calling your attention to this map of the State of Michigan, a State map which shows the larger outline of my district and counties. In Ingham County, where my residence is, is the city of Lansing, with 125,000 population. In Genesee County, which contains the city of Flint, there is 200,000. Livingston County, down here, is a little agricultural county and may have 30,000 population. Oakland County, in the center, with the city of Pontiac and impinging onto the greater industrial part of Wayne County, has over 200,000 population. In Wayne County, outside of the city of Detroit, in the city of Dearborn, where the Ford plants are, there is a population of 45,000 to 50,000, and then there is the city of Wayne and the city of Northville and several other cities surrounding, but when we come to the city itself, and the sixth district runs into the city, with all of this territory running from the extreme west end of the city to east end, and the county running out to the St. Clair and Detroit Rivers, and having 300,000 to 400,000 population, with the city here of Highland Park of 100,000 or 120,000 people, and with Hamtramck, another city of 100,000 people, you ladies and gentlemen can appreciate the situation.

I am in sympathy with the gentleman on the alien population amendment, more or less, if it was constitutional; but here is a great district in which I have shown you a population of one and one-half millions, as compared to the numbers that I could read from other States, besides Missouri, where county after county has more population than your entire district, and where individual cities in the district have more population than your entire district; and let me say, ladies and gentlemen of the committee, that that district to which I refer, the sixth district of Michigan, is made up of American citizens and not foreigners, and they are people who come from Vermont, New Hampshire——

Mr. GIBSON. Oh, not all of them.

Mr. HUDSON. Yes; they are descendants of people in Oakland County, in Ingham County, and in Livingston County who were from New York and Vermont and New Hampshire and other Eastern States, and they are asking that they may have the same equality of representation in this Legislature as your State has to-day.

Mr. LOZIER. Mr. Chairman, will the gentleman yield?

Mr. HUDSON. Yes.

Mr. LOZIER. The gentleman understands that Congress does not redistrict the States, but only allocates the representation, and that the condition in Missouri, Illinois, Michigan, and California can all be remedied by the action of the State.

Mr. HUDSON. It can not be remedied and get an equal ratio or proportion with Michigan and Missouri.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. DOWELL. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. LOZIER. Mr. Chairman, I yield 10 minutes to the gentleman from Iowa [Mr. THURSTON].

Mr. DOWELL. Mr. Chairman, will the gentleman from Iowa yield to me for a moment?

Mr. THURSTON. Yes.

Mr. DOWELL. Is it not true that in the State of Michigan, in the third district, they have a population of 225,000 only, and in some of the districts in Detroit over 400,000? Why is it the gentleman has not been anxious to redistrict his own State and correct that defect in his own State?

Mr. HUDSON. We are very anxious to do it; and if you will pass the apportionment bill, we will redistrict the State.

Mr. THURSTON. Mr. Chairman, the remarks made by my good friend from the State of Michigan [Mr. HUDSON] are rather interesting, but they tell only one side of the story. I have before me two tables which I introduced when this measure was under consideration at the last session, showing the population in each State and several large cities, of native born and naturalized citizens and aliens, and to supplement the contention that was just offered by the gentleman from Michigan, I call his attention to the fact that the city of Detroit had over 200,000 aliens in 1920. It is a matter of common knowledge that Detroit has greatly increased in size and population since that time, and now it is estimated to have between 300,000 and 400,000 aliens. So, if those aliens were not computed in the apportionment, Michigan, or Detroit in particular, would not be denied the number of Members for which they are contending if citizenship is to be considered.

Referring to the State of New York, I find that the entire State in round numbers contained, under the 1920 census, 1,600,000 aliens, and that 1,200,000 of these persons were in the city of New York. If the Legislature of the State of New York could be permitted to redistrict the State and take into consideration the citizens or naturalized citizens, New York City would thereby lose representatives in proportion, and the gentleman who just left the floor explained that Missouri had a number of districts where her Congressmen did not represent a fair share in proportion, but there are very few aliens in the State of Missouri.

Mr. MANLOVE. Mr. Chairman, will the gentleman yield?

Mr. THURSTON. Yes.

Mr. MANLOVE. Coming from Missouri I think I express the sentiment of honest-to-God Americans in that State when I say that the people of Missouri are not willing to give up a single Representative and have his allocated to a lot of foreigners from some other country. [Applause.]

Mr. THURSTON. But there are Members in this House serving from the city of New York who have received less than 25,000 votes, or whose district cast less than 25,000 votes for the electors or for Members of Congress. So it is manifest to all that these great centers of population are receiving a greater proportion in the control of our Government than they are entitled to receive.

As practical men, if we organize a corporation to-day we would have two classes of stock, one of which would have the voting power and the other of which would be denied that power, yet all would share equally in the profits. So we have a great business organization here in our country, composed of from 115,000,000 to 120,000,000 persons, and by the amendments we expect to offer here we are seeking to apply that reasoning to this great corporation or partnership in which we are equal owners to-day, and to provide that the control of this corporation shall be exercised by those who really own it rather than be shared by those who happen to be here.

And we revert back to the inquiry made on the floor here a short time ago about what difference it would make as to whether we pass this bill. It makes this difference: If this anticipatory measure is enacted, this body will surrender a portion of the authority which is now vested in the Congress, and if a subsequent Executive should not desire to approve subsequent legislation, and it was sought to pass a reapportionment measure over the President's veto, it would take two-thirds of the membership of this body and two-thirds of the membership of the Senate to override the presidential veto, whereas to-day it requires only a majority or 51 per cent of that power.

So if we pass this measure, the Congress surrenders the difference between 51 per cent and 66⅔ per cent, or about 15 per cent of our power, and upon a power that was plainly and solely vested in the Congress.

The question arises then: Has there been a delegation of constitutional power, referred to Supreme Court decisions, where the Supreme Court has sustained legislation delegating political or discretionary powers to executive boards or bodies? But, my friends, I want to challenge the proponents of this bill and ask if they can present any case where the Supreme Court has approved or ratified the delegation of a political power? I assert that the books do not contain such a case, and in all of those cases where the Supreme Court has justified the delegation of power, in every instance they say such delegation was necessary because a great number of railroad rates could not be changed from time to time by the Congress, or we may not have information to enable us to act upon each portion of the tariff, or other methods of carrying out the minor legislative desires. But in these instances where it is sought to delegate a purely political power, is there anyone here who contends that the framers of this Constitution intended that the Congress should divest itself of this discretionary legislative power?

The Supreme Court has held that if the act was political in its nature the court would refuse to take jurisdiction, thus pointing out that the courts have been unwilling to take from Congress the power so plainly vested in it by the Constitution.

Mr. BRIGHAM. Mr. Chairman, will the gentleman yield?

Mr. THURSTON. Yes.

Mr. BRIGHAM. The gentleman is a member of the Census Committee, and I assume is an authority on the method of apportionment by major fractions.

Mr. THURSTON. No; I am not. I doubt if there is any one such authority in the country.

Mr. BRIGHAM. On page 10 of the committee's report on H. R. 11725, the bill that passed Congress last session, there is presented an illustration of the working out of the major fractions method as it operated in the 1910 reapportionment. It is explained that first one Representative is given each State, as provided for by the Constitution. Then the population of each State is divided by 1½, 2½, 3½, and so forth, and allocation is made in accordance with the size of the quotients. When it came to the allocation of the four hundred and thirty-fifth Representative, it went to Iowa with a quotient of 211,883. Now the report shows that Ohio, in the computation for this Representative, had a quotient of 211,872, or only 11 less. Now in case the quotient for Ohio had been the same as the quotient for Iowa, which States would have had the four hundred and thirty-fifth Representative?

Mr. THURSTON. I can not explain what was in the mind of Congress at that time as to systems, because an arbitrary figure, allocating the number for each State, was followed.

Mr. BRIGHAM. If the quotients of two or more States are equal, when it comes to the allocation of the four hundred and thirty-fifth, or last, Representative, who determines which State shall be entitled to the seat here in this House?

Mr. THURSTON. That would be a delegation of the discretionary power.

Mr. BRIGHAM. According to the terms of this bill, we leave it to the President to determine which State shall have the Representative if the condition I have cited should arise.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. RANKIN. Mr. Chairman, I yield to the gentleman three minutes more.

The CHAIRMAN. The gentleman from Iowa is recognized for three minutes more.

Mr. THURSTON. I want to refer to the statement of the distinguished gentleman from Massachusetts [Mr. TINKHAM] in reference to the fourteenth amendment in particular, relating to the denial of the right of suffrage. If we pass this measure and the subsequent Congress does not seek to reapportion, thereby making effective the automatic provisions of this law, and the Clerk of this House would then notify the chief executive of each State as to the membership of that State in the House of Representatives, and thereafter a question arose as to the abridgment of the right of suffrage in one of these States, as provided in the fourteenth amendment, what would be the situation? Then the question arises, Has this Congress the right to nullify or overlook a plain constitutional provision when those who claim that there has been an abridgment or denial of the right of suffrage come in and demand redress? What will be the recourse for those who come and say that such an abridgment does exist and they want steps taken to correct the situation?

Mr. MICHENER. Mr. Chairman, will the gentleman yield?

Mr. THURSTON. Yes.

Mr. MICHENER. Will not the position be exactly the same as those States are in to-day, where they are denied the right of representation? In other words, are there not two ways of violating the Constitution, one by omission and the other by commission? When the Congress deliberately omits doing that which the Constitution says it shall do there is no power on earth to compel it to do it.

Mr. THURSTON. The gentleman makes a mistake when he says there is a plain designation. There is a plain constitutional mandate to take the census, but there is nothing in the Constitution making it imperative for the Congress to make a reapportionment or to act upon it. These two disinct subjects are too frequently confused.

Mr. MICHENER. The gentleman is a good lawyer. Will he tell us the purpose in the minds of the framers of the Constitution in providing for the taking of the census? If the Congress should not agree upon a method of reapportionment, does the gentleman contend that this amendment eliminating aliens from the count is a constitutional matter or of a legislative nature?

Mr. THURSTON. I say it is a power of a political nature vested in the Congress, and if the Congress acts upon that power it is my humble conclusion that the Supreme Court would not disturb the findings of the Congress, as the Supreme Court has extended wide latitude to the legislative branch of the Government in the field of political action.

Under leave to extend my remarks I include the following tables:

Population of the United States, by States, 1930, 1925, and 1920, with number of aliens in 1920

	Estimated population Jan. 1, 1930 [1]	State census 1925	Federal census Jan. 1, 1920	
			Total population	Aliens [2]
United States	122,537,000		105,710,620	7,427,604
Alabama	2,612,000		2,348,174	8,968
Arizona	499,000		334,162	68,606
Arkansas	1,978,000		1,752,204	6,296
California	4,755,000		3,426,861	453,397
Colorado	1,116,000		939,629	54,400
Connecticut	1,717,000		1,380,631	233,634
Delaware	248,000		223,003	11,496
District of Columbia	572,000		437,571	13,739
Florida	1,489,000	1,263,549	968,470	35,899
Georgia	3,258,000		2,895,832	7,652
Idaho	567,000		431,866	15,765
Illinois	7,555,000		6,485,280	543,528
Indiana	3,220,000		2,930,390	84,977
Iowa	2,433,000	2,419,927	2,404,021	69,401
Kansas	1,847,000	1,812,986	1,769,257	48,509
Kentucky	2,577,000		2,416,630	11,934
Louisiana	1,977,000		1,798,509	30,507
Maine	800,000		768,014	65,046
Maryland	1,645,000		1,449,661	51,163
Massachusetts	4,367,000	4,144,205	3,852,356	629,227
Michigan	4,754,000		3,668,412	383,583
Minnesota	2,781,000		2,387,125	158,374
Mississippi	[3] 1,790,618		1,790,618	4,548
Missouri	3,544,000		3,404,055	78,772
Montana	[3] 548,889		548,889	35,410
Nebraska	1,428,000		1,296,372	58,422
Nevada	[3] 77,407		77,407	9,557
New Hampshire	458,000		443,083	53,250

[1] Revised February, 1928, on 1920–1927 data.
[2] Includes all foreign born, except those reported as naturalized.
[3] Population Jan. 1, 1920; no estimate made.

Population of the United States, by States, 1930, 1925, and 1920, with number of aliens in 1920—Continued

	Estimated population Jan. 1, 1930	State census 1925	Federal census Jan. 1, 1920	
			Total population	Aliens
New Jersey	3,939,000		3,155,900	421,551
New Mexico	402,000		360,350	23,456
New York	11,755,000	11,162,151	10,385,227	1,609,190
North Carolina	3,005,000		2,559,123	3,819
North Dakota	[4] 641,192	641,192	646,872	35,183
Ohio	7,013,000		5,759,394	372,925
Oklahoma	2,496,000		2,028,283	20,287
Oregon	923,000		783,389	49,918
Pennsylvania	10,053,000		8,720,017	795,330
Rhode Island	736,000	679,260	604,397	92,913
South Carolina	1,896,000		1,683,724	3,339
South Dakota	716,000	681,260	636,547	25,544
Tennessee	2,531,000		2,337,885	7,547
Texas	5,633,000		4,663,228	286,297
Utah	545,000		449,396	24,599
Vermont	[3] 352,428		352,428	23,472
Virginia	2,622,000		2,309,187	16,524
Washington	1,628,000		1,356,621	124,866
West Virginia	1,770,000		1,463,701	46,983
Wisconsin	3,009,000		2,632,067	203,888
Wyoming	257,000		194,402	13,913

[3] Population Jan. 1, 1920; no estimate made.
[4] Population State census 1925; no estimate made.

Population of the 20 largest cities in the United States, 1930, 1925, and 1920, with number of aliens in 1920

	Estimated population Jan. 1, 1930	State census 1925	Federal census Jan. 1, 1920	
			Total population	Aliens [1]
New York, N. Y.	6,087,700	5,873,356	5,620,048	1,218,074
Chicago, Ill.	3,234,700		2,701,705	382,741
Philadelphia, Pa.	2,106,700		1,823,779	210,538
Detroit, Mich.	1,445,500	[2] 1,242,044	993,678	185,969
Cleveland, Ohio	1,046,300		796,841	138,368
St. Louis, Mo.	861,300		772,897	45,018
Boston, Mass.	808,200	779,620	748,060	135,627
Baltimore, Md.	847,400		733,826	42,282
Pittsburgh, Pa.	680,900		588,343	58,268
Los Angeles, Calif.	[3]		576,673	72,024
Buffalo, N. Y.	564,500	538,016	506,775	58,520
San Francisco, Calif.	599,100		506,676	79,024
Milwaukee, Wis.	555,100		457,147	55,134
Washington, D. C.	572,000		437,571	13,739
Newark, N. J.	483,900		414,524	69,108
Cincinnati, Ohio	[3]		401,247	14,598
New Orleans, La.	436,800		387,219	17,132
Minneapolis, Minn.	468,100		380,582	34,099
Kansas City, Mo.	402,700		324,410	12,969
Seattle, Wash.	395,100		315,312	43,231

[1] Includes all foreign born, except those reported as naturalized.
[2] Special census taken under Federal supervision as of May 31, 1925.
[3] Estimate not used; result unsatisfactory.

The CHAIRMAN. The time of the gentleman from Iowa has expired.

Mr. FENN. Mr. Chairman, I yield 20 minutes to the gentleman from New York [Mr. REED].

The CHAIRMAN. The gentleman from New York is recognized for 20 minutes.

Mr. REED of New York. Mr. Chairman and ladies and gentlemen of the committee, after being a Member of this body for 10 years I realize that on both sides of the aisle there are men who are well qualified as constitutional lawyers.

I can hardly flatter myself that I shall receive the undivided attention of the House which many of the very able men who have discussed constitutional questions have received, nevertheless I have a question here that is of the utmost importance to some of the larger States which should receive your attention. I am going to have the amendment read for the information of the House; then it will appear in the RECORD and Members can give careful thought and study to it in the morning. When we are under the 5-minute rule I propose to offer this amendment. It would be much more pleasant for me to stand here and talk without reference to any prepared manuscript, but in order that I may not be misunderstood and so that I shall not in any way fail to quote correctly the Constitution and authorities bearing out the argument which I shall make, I shall ask the indulgence of the committee and the close attention of the members of the committee while I read a brief which I have prepared touching the reason for the amendment which I propose to offer and the constitutional authority for its adoption.

Mr. MONTAGUE. Will the gentleman yield?

Mr. REED of New York. Yes.

Mr. MONTAGUE. Will the gentleman also read the amendment itself?

Mr. REED of New York. Yes; I will read the amendment.

Mr. MONTAGUE. So that it may appear in the RECORD?

Mr. REED of New York. That is what I plan to do. At the end of the bill, if the bill should not be emasculated by removing some of the other sections, I shall introduce this as section No. 23.

Nothing in this act contained shall be construed to prevent the legislature of any State (subject, however, to the initiative and referendum law in any State wherein such a law exists), at any time after the approval of this act, in order to secure contiguous and compact territory and equalization of population in accordance with the rules enumerated in section 3 of the apportionment act, approved August 8, 1911, by concurrent resolution, redistricting the State for the purpose of electing Representatives to Congress, and upon each and every such redistricting the Representatives to Congress shall in any such State be elected from the new districts so formed.

I just want to call your attention to the fact that there is nothing there that disturbs the free action of the legislatures as they now function—nothing whatever.

The purpose of an apportionment act is to apportion or allocate among the several States the entire representative power of all the people in the Union according to their respective numbers. The bill (S. 312) provides for the whole number of which the House of Representatives is to be composed, viz, 435 Members, and a method is then provided to ascertain how much of this representative power each State is entitled to, based upon its population.

The representative power of all the people in the Union and its proper allocation to the several States, as directed by the Constitution, goes to the very root of free government. It was sought by those who framed the Constitution to distribute this power of all the States on the basis of the population of the several States, and to that end they directed an enumeration be made every 10 years.

Article I, section 2, clause 3, of the United States Constitution provides that:

The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of 10 years, in such manner as they shall direct.

Mr. MONTAGUE. Will the gentleman yield?

Mr. REED of New York. Yes.

Mr. MONTAGUE. That provides for a decennial census after the expiration of the first three years?

Mr. REED of New York. Yes.

Mr. MONTAGUE. As I recall, the First Census was in 1790?

Mr. REED of New York. Exactly.

Mr. MONTAGUE. And the decennial period would begin the 1st of December 10 years thereafter, while here we anticipate the decennial period by six months. Where have we constitutional authority to do that?

Mr. REED of New York. If the gentleman will let me proceed, that will be taken up later.

In obedience to this constitutional mandate the Congress has provided by legislation for a decennial census and a reapportionment of congressional representation from 1790 to 1910. It is now nine years since the 1920 census was taken, and although the House has performed its constitutional duty by passing a reapportionment act, the Senate has failed to act until the first session of the Seventy-first Congress. This deadlock has broken a precedent of legislative regularity and obedience to a constitutional mandate covering a period of 120 years.

The present bill, S. 312, seeks to anticipate a similar legislative situation on the subject of apportionment and by its provisions prevent a future legislative deadlock on this subject, the provisions to become operative, however, only in the event that the Congress fails to act. The remedial provision to which I refer is section 22 of S. 312, as follows:

SEC. 22. That on the first day, or within one week thereafter, of the second regular session of the Seventy-first Congress and of each fifth Congress thereafter, the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the fifteenth and each subsequent decennial census of the population, and the number of Representatives to which each State would be entitled under an apportionment of the existing number of Representatives made in the following manner: By apportioning the existing number of Representatives among the several States according to the respective numbers of the several States as ascertained under such census, by the method used in the last preceding apportionment and also by the method of equal proportions, no State to receive less than one Member.

If the Congress to which the statement required by this section is transmitted fails to enact a law apportioning Representatives among the several States, then each State shall be entitled, in the second succeeding Congress and in each Congress thereafter until such apportioning law shall be enacted or a subsequent statement shall be submitted

as herein provided, to the number of Representatives shown in the statement based upon the method used at the last preceding apportionment; and it shall be the duty of the Clerk of the last House of Representatives forthwith to send to the executive of each State a certificate of the number of Representatives to which such State is entitled under this section. In case of a vacancy in the office of Clerk, or of his absence or inability to discharge this duty, then such duty shall devolve upon the officer who, under section 32 or 33 of the Revised Statutes, is charged with the preparation of the roll of Representatives elect.

This section shall have no force and effect in respect of the apportionment to be made under any decennial census unless the statement required by this section in respect of such census is transmitted to the Congress within the time prescribed in this section.

There is another situation that may arise to cause a miscarriage of justice with respect to the reapportionment of Representatives among the States. Provision is made in S. 312 to prevent a deadlock between the House and the Senate with respect to apportionment legislation, but no provision is made in the Senate bill to prevent a possible deadlock in the States when the legislature attempts to redistrict. Let us take New York State as an illustration of what may happen. It is predicted that under the reapportionment based upon the 1930 census New York State may and probably will lose a Representative. A deadlock between the legislature and the executive might prevent a redistricting of the State. This, if it should occur, would require that all of the Members, 42 in number, be elected at large. This would be manifestly unfair to the people of the State and the Nation.

The whole principle of representative government, as disclosed by the debates of the framers of the Constitution, was to make it possible for the various interests, such as agriculture, industry, finance, commerce, navigation, to have a voice in the national councils. Congress recognized the fact in 1842 that this could best be accomplished by providing for congressional districts composed of contiguous territory which would enable a Representative to be known to his constituents, and he in turn to be familiar with the conditions in that district, so that he could legislate intelligently and effectively. The selection and election of the 42 Representatives at large, without due regard to the agricultural, industrial, financial, and other interests of the State, would deprive a large portion of the State from any voice in the national councils. It is to avoid any such calamity as this that I am urging this amendment.

This situation I wish to meet by offering the following amendment:

SEC. 23. Nothing in this act contained shall be construed to prevent the legislature of any State (subject, however, to the initiative and referendum law in any State wherein such a law exists), at any time after the approval of this act, in order to secure contiguous and compact territory and equalization of population in accordance with the rules enumerated in section 3 of the apportionment act, approved August 8, 1911, by concurrent resolution, redistricting the State for the purpose of electing Representatives to Congress, and upon each and every such redistricting the Representatives to Congress shall in any such State be elected from the new districts so formed.

This brings us to a consideration of the scope of the power of Congress in this matter of reapportionment of Representatives. As clearly stated in the case of Prigg *v.* Pennsylvania (1842, 16 Pet. 619), while there is no express power in the Constitution authorizing Congress to reapportion, the whole purpose of the enumeration, as provided for in the Constitution, would be nullified if the means to accomplish the ends were denied to Congress:

Although the Constitution has declared that Representatives shall be apportioned among the States according to their respective * * * numbers, and for this purpose it has expressly authorized Congress by law to provide for an enumeration of the population every 10 years, yet the power to apportion Representatives after this enumeration is made is nowhere found among the express powers given to Congress, but it has always been acted upon as irresistably flowing from the duty positively enjoined by the Constitution.

Following is Article I, section 4, of the United States Constitution:

Control of congressional elections.—I. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators.

This constitutional provision was adopted on Thursday, August 9, 1787. The debate shows clearly that the purpose the framers of the Constitution had in mind was to keep sufficient control of the election of Representatives to prevent any State legislature from obstructing or interfering with the orderly and equitable apportionment of the representative power of the people.

The Committee of Detail had provided in its report that—

"The times and places and manner of holding the election of the Members of each House shall be prescribed by the legislature of each State; but their provisions concerning them may, at any time, be altered by the Legislature of the United States."

Madison and G. Morris thought that this provision ought at least to be confined to election of Members of the House of Representatives; since, as to the Senate, the right of the legislatures to elect members of that body must necessarily include the right to regulate the times, places, and manner of election. The convention, however, did not concur with his view. Charles Pinckney and Rutledge moved to reject the power of Congress to alter the provisions made by the States; Madison, Gorham, King, and G. Morris contended that such a power was absolutely necessary; for as Madison said:

"The necessity of a general government supposes that State legislatures will sometimes fail or refuse to consult the common interest at the expense of their local constituency or prejudices * * *. The legislatures of the States ought not to have the uncontrolled right of regulating the times, places, and manner of holding elections. These are words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power * * *. It seemed as improper in principle * * * to give over the election of the Representatives of the people in the general legislature, as it would be to give to the latter a like power over the election of their representatives in the State legislatures."

The convention supported Madison's view.

Read of Delaware then suggested an amendment to vest in Congress the power not only to alter the provisions of the States but to make regulations in case the States should fail, or refuse altogether, and this was adopted. (The Making of a Constitution, by Charles Warren.)

More than a quarter of a century after the adoption of Article I, section 4, of the Constitution, William Rawle discussing this provision in his work on the United States Constitution had this to say:

It only remains to observe that to guard against a refractory disposition, should it ever arise in legislatures of the States, in respect to times, places, and manner of holding elections for Senators and Representatives, Congress is empowered at any time to make or alter by law such regulations, except as to the place of choosing Senators.

Kent, commenting on Article I, section 4, in his Commentaries, in connection with the apportionment act of 1842, which for the first time provided that Representatives should be elected by districts composed of contiguous territory * * *, said:

This direction—referring to election by districts composed of contiguous territory—was authorized by the provision in the Constitution (Art. I, sec. 4) that the time, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

Continuing, Kent expressed the reason and the wisdom of the legislation:

The election of Members of Congress by districts had been heretofore adopted in some of the States and not in others. Uniformity on this subject was desirable, and the measure itself was recommended by the wisdom and justice of giving, as far as possible, to local subdivisions of the people of each State a due influence in the choice of Representatives, so far as not to leave the aggregate minority of the people in a State, through approaching perhaps to a majority, to be wholly overpowered by the combined action of the numerical majority, without any voice whatsoever in the national councils.

THE POWER OF CONGRESS TO REDISTRICT

An examination of the reapportionment acts from 1790 until the act of 1842 shows that nothing was said about laying out congressional districts. The power to do so, however, was delegated to Congress in section 4 of Article I of the Constitution.

The history of apportionment legislation and the power of Congress to delegate authority to the States to redistrict was carefully compiled by a distinguished former Member of this House, Hon. Marion E. Rhodes, a Representative from Missouri. The brief is as follows:

BRIEF OF HON. MARION E. RHODES, A REPRESENTATIVE IN CONGRESS, FROM THE STATE OF MISSOURI, ON THE QUESTION OF THE RIGHT OF CONGRESS UNDER THE CONSTITUTION TO DELEGATE TO THE STATES AUTHORITY TO REDISTRICT

Section 2, Article I, of the Constitution, provides that Representatives and direct taxes shall be apportioned among the several States according to their respective numbers.

Section 2, Article I, of the Constitution, also provides that the actual enumeration of inhabitants of the United States shall be made within

three years after the first meeting of Congress, under the Constitution, and within every subsequent period of 10 years in such manner as Congress shall direct. This same section 2 provides that the number of Representatives shall not exceed one for ever 30,000. This is all the constitutional authority there is on the subject of taking the census and fixing the basis of representation in Congress, except what appears in section 2 of the fourteenth amendment, and from 1790 down to the present time Congress has in various acts, but not always in the same way, provided for taking the census once in 10 years and fixing by law the basis of representation.

It is clear under the provisions of section 2, Article I, of the Constitution, that the object of taking the census was for the purpose of apportioning direct taxes and Representatives in Congress among the several States. Inasmuch as the census is to be taken once within each period of 10 years, it is also clear this requirement was put into the Constitution in order to equitably apportion Representatives in Congress among the several States and to provide for an increase in the number of Representatives in Congress, from time to time, as the population might increase.

Following the decennial census of 1790, Congress passed its first apportionment act, effective April 14, 1792. This was a very brief act, consisting of but one short paragraph, conforming to the requirements of the Constitution above mentioned. All Members of Congress under this act were evidently elected at large, because there is no reference therein to the question of congressional districts. The act provided for one Representative in each State for every 33,000 persons, determined according to section 2 of Article I of the Constitution. (1 Stat. L. p. 253.)

Following the census of 1800, effective January 14, 1802, Congress passed the second apportionment act, providing for one Representative in Congress for every 33,000 persons in each State, determined according to the Constitution. This act, like the preceding, consisted of but one short paragraph and made no reference to the election of Members of Congress by congressional districts. In fact, it was a verbatim copy of the act of 1792. (2 Stat. L. p. 128.)

Following the census of 1810, by act of Congress, effective December 21, 1811, the third apportionment act was passed. The only difference in this act and the two preceding acts was that the ratio was changed to one Member for every 35,000 persons in each State, determined according to the Constitution. (2 Stat. L. p. 669.)

Following the census of 1820, by act of Congress, effective March 7, 1822, Congress passed its fourth apportionment act, which was substantially the same as those preceding, except the basis of representation was fixed at one Representative for every 40,000 persons in each State, determined according to the Constitution, no reference being made in this act to the question of congressional districts. (3 Stat. L. p. 651.)

Following the census of 1830, by act of Congress, effective May 22, 1832, Congress passed its fifth apportionment act, which was substantially the same as each of the preceding acts, except the basis of representation was increased from one Member for every 40,000 persons to one Member for every 47,000 persons, to be determined according to the Constitution, no reference being made to congressional districts. (4 Stat. L. p. 516.)

Mr. LOZIER. Will the gentleman yield?

Mr. REED of New York. Yes.

Mr. LOZIER. The gentleman understands that George Washington vetoed the first apportionment bill because it involved the principle of major fractions?

Mr. REED of New York. I recall that very distinctly, and I recall that Webster in 1832 argued that question and that later major fractions became legal, so far as congressional action was concerned, when it was found how it was affecting large States adversely. I remember that distinctly, and you will find it in the debates. Webster made the statement, and when the country understood the proposition major fractions were adopted.

Mr. AYRES. Will the gentleman yield?

Mr. REED of New York. Yes.

Mr. AYRES. And that was without a constitutional provision?

Mr. REED of New York. Yes.

Following the census of 1840, by act of Congress, effective June 25, 1842, Congress passed its sixth apportionment act, fixing the ratio at one Representative for every 70,683 persons in each State having a fraction greater than one moiety of the said ratio. This act consists of two paragraphs, the first being substantially the same as in the preceding apportionment acts, except the basis of representation is increased. Section 2 provides as follows: "That in every case where a State is entitled to more than one Representative in Congress the number shall be elected by districts composed of contiguous territory equal in number to the number of Representatives to which such State may be entitled, no one district to be entitled to more than one Representative." This is the first time in the history of apportionment legislation any reference is made to congressional districts, Members of Congress having been prior to this time either elected at large in the several States or elected by districts fixed by the several States independent of congressional action. In most cases, however, they were elected at large. (5 Stat. L. p. 491.)

By act of Congress, effective May 23, 1850, provision was made for taking the seventh decennial census. In this act Congress authorized the Secretary of the Interior to apportion Representatives in Congress among the several States and fixed the number of Members at 233. This act provided for electing one Represenative at Large for each major fraction of the ratio. This act also provided for taking of the census by the United States marshals of the several States. This is the first time in the history of our Government (and I think the only time) that Congress provided for taking the census and determining the representation in Congress in the same act. Under the provisions of this act the Secretary of the Interior was not only directed to apportion Representatives in Congress among the several States, but he was also directed to certify the result to the House of Representatives and to the governors of the several States. (9 Stat. L. p. 433.)

However, supplementary to this act, Congress passed an act, effective July 30, 1852, directing the Secretary of the Interior to enforce the provisions of the above-mentioned act. It appears the census returns from the State of California were incomplete, which had resulted in delay on the part of the Secretary of the Interior in complying with the law. The act further provided for an increase of the total membership, previously fixed at 233, to 234. (10 Stat. L. p. 25.)

By act of Congress, approved March 4, 1862, it was provided "that from and after the 3d day of March, 1863, the number of Members of the House of Representatives of the Congress of the United States shall be 241; and the eight additional Members shall be assigned one each to Pennsylvania, Ohio, Kentucky, Illinois, Iowa, Minnesota, Vermont, and Rhode Island." This act was silent as to the question of laying States out into congressional districts. (12 Stat. L. p. 353.)

By act of Congress, approved February 2, 1872, Congress fixed the number of Representatives at 283 Members, to be elected by districts composed of contiguous territory and containing as nearly as practicable an equal number of inhabitants. Under this act provision was made for electing Members at large in the States in which an increased number of Representatives had been given under the law, providing that the other Representatives to which the State was entitled should be elected by districts then provided for until the legislature of said State might otherwise provide before the time fixed by law for the election of such Representatives. This act also fixed the first Tuesday after the first Monday in November, beginning with the year 1876, as the day for electing Representatives and Delegates in Congress. This act also provided a method of filling vacancies on account of death or resignation in Congress. Section 6 of the act provided for the enforcement of the fourteenth article of amendment. (17 Stat. L. p. 28.)

By act of Congress approved February 25, 1882, the House of Representatives was to be composed of 325 Members, there being no reference to the ratio of representation. Section 3 of the act provided that Representatives should be elected by districts composed of contiguous territory and each containing, as nearly as practicable, an equal number of inhabitants. The conclusion of this section follows in the nature of an amendment: "That unless the legislature of such State shall otherwise provide before the election of such Representatives shall take place as provided by law, where no change shall be hereby made in the representation of a State, Representatives thereof to the Forty-eighth Congress shall be elected therein as now prescribed by law. If the number as hereby provided for shall be larger than it was before this change, then the additional Representative or Representatives allowed to said State under this apportionment may be elected by the States at large, and the other Representatives to which the State is entitled by the districts as now prescribed by law in said State; and if the number hereby provided for shall in any State be less than it was before the change hereby made, then the whole number to such State hereby provided for shall be elected at large unless the legislature of said State has provided or shall otherwise provide before the time fixed by law for the next election of Representatives therein." (22 Stat. L. p. 5.)

By act of Congress approved February 7, 1891, the number of Representatives was fixed at 356 Members, apportioned among the several States according to the provisions of this act, without reference to the ratio of representation as in the preceding reapportionment act. This act also provided for the election of Representatives by districts composed of contiguous territory and containing, as nearly as practicable, an equal number of inhabitants. Section 4 of the act, which is very similar to section 3 of the preceding act, is as follows: "That in case of an increase in the number of Representatives which may be given to any State under this apportionment, such additional Representative or Representatives shall be elected by the State at large, and the other Representatives by the districts now prescribed by law, until the legislature of such State, in the manner herein prescribed, shall redistrict such State; and if there be no increase in the number of Representatives for the State, the Representatives thereof shall be elected from the dis-

tricts now prescribed by law until such State be redistricted as herein prescribed by the legislature of said State." (26 Stat. L. p. 735.)

Following the census of 1900, by act of Congress approved January 16, 1901, the number of Representatives was fixed at 386 Members, apportioned among the several States as in the two preceding acts without reference to the ratio. This act contained substantially the same provision, both with regard to laying out the States into congressional districts and electing Representatives at large. Section 4, however, contains this provision: "If the number hereby provided for shall in any States be less than it was before the change hereby made, then the whole number in such State hereby provided for shall be elected at large, unless the legislatures of the said States have provided or shall otherwise provide before the time fixed by law for the next election of Representatives therein." (31 Stat. L. p. 733.)

Following the census of 1910, by act of Congress approved August 8, 1911, the number of Representatives was fixed at 433 Members without reference to ratio. This act contains the same provisions with regard to the method of electing Members of Congress and laying States out into congressional districts composed of contiguous territory as in the act of 1901. Under section 4 of this act the same provision was enacted in relation to electing Members at large as in the preceding reapportionment act, except no provision was made for electing Members at large on account of a reduction of membership, because under this act no State lost a Member. This act contained an additional section relating to the method of nominating candidates for Congress at large. (37 Stat. L. p. 13.)

Under the apportionment act of February 25, 1882, Maine and a few other States each lost a Member of Congress. This act provided specifically for the election of Members of Congress at large, in the event a State lost representation, until such time as the legislature might redistrict the same. While the reapportionment act of January 16, 1901, contained the same provision concerning the election of Members of Congress at large, in the event a State lost membership, as was provided in the act of February 25, 1882, yet under this act no State lost membership. It will be observed from the foregoing history of reapportionment legislation that Congress did not exercise its power, under the Constitution, in directing the several States in the formation of congressional districts during the first 50 years of our national life. In other words, the States were left free to either elect Members of Congress at large or to elect them from local congressional districts of their own making.

Reviewing the history of congressional elections, it is found that in a vast majority of cases Members of Congress were elected at large in all the States prior to 1842. In that year, however, Congress for the first time provided that in every case where a State was entitled to more than one Representative in Congress, the number to which such State was entitled should be elected by congressional districts composed of contiguous territory, equal in number to the number of Representatives to which such State was entitled according to the provisions of the act.

In the reapportionment act of February 2, 1872, Congress not only provided that congressional districts should be composed of contiguous territory, but that such districts should be composed as nearly as practicable of equal population. From that day to this, in every reapportionment act, Congress has provided that the several States should be laid out into congressional districts composed of contiguous territory and of equal population.

Under the apportionment act of May 23, 1850, Congress delegated authority to the Secretary of the Interior to reapportion Representatives in Congress according to the census herein provided for, and to certify the result to the House of Representatives and to the governors of the several States.

It is clear from the above-cited cases that Congress from time to time could just as easily have provided that the governors of States might lay out the States into congressional districts as for the legislatures to have done so, because it is from the reapportionment act itself the States derive their authority to lay out congressional districts, and not from the Federal Constitution. Hence, Congress can delegate such authority either to the legislatures or to the governors of the several States.

As my time is exhausted I shall discuss at a later time the merits of the amendment and its importance to the people of my State.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. RANKIN. Mr. Chairman, I yield 15 minutes to the gentleman from Kentucky [Mr. ROBSION].

Mr. ROBSION of Kentucky. Mr. Chairman, ladies, and gentlemen, you have already been detained perhaps too long. I desire, however, to express my views on this very important matter.

This bill includes both the taking of the census and the apportionment of the House of Representatives. I think these subjects should have been considered separately. There is no objection to the taking of the census. However, I agree with the chairman of the Census Committee, Mr. FENN, and with the gentleman from Mississippi, the ranking Democrat of the Census Committee, Mr. RANKIN, that the provision of the bill providing for the taking of the census under the civil service should be stricken out. [Applause.]

It seems to me to be unwise and a waste of the public money to hold a civil-service examination to select about 100,000 people when their employment will last for about two weeks. To do this it would be necessary to examine perhaps 500,000 applicants. I am sure that other methods may be used that will prove to be more satisfactory in selecting the census enumerators and without cost to the Government. The Civil Service Commission could not make the necessary investigation in the brief time allowed. Census enumerators should be persons not only of proper educational qualifications but of such personality and acquaintance in the community as would enable them to secure without offense the information sought.

Mr. BARBOUR. Will the gentleman yield?

Mr. ROBSION of Kentucky. I yield.

Mr. BARBOUR. Does the civil-service provision apply only to those employed as enumerators?

Mr. ROBSION of Kentucky. It applies to everybody. If we do not take out that provision there will be civil-service tests for supervisors, assistant supervisors, clerks, enumerators and all, and I trust the House will take out that feature by an overwhelming vote. [Applause.]

I notice on page 3 of the bill it says that preference shall be given to American citizens and to ex-service men. This should be amended and provide that no one shall be employed except American citizens. Why, have we come to the point in this country where we have to employ aliens to take the census?

Some one must have had it in mind that there are so few American citizens living in some communities we could not find a citizen to take the census. None but citizens could take the oath of office and none but citizens should be employed.

Another thing I think unwise, my friends, is the taking of the census in the wintertime. As I recall, this has been done but one time, and that was in 1920.

Let me warn those who represent rural districts, in my judgment this is another effort to further transfer political control from the rural sections to the cities. In many sections the roads are so bad in the wintertime that it would hinder the taking of a correct census; and then, again, tens of thousands of men and women working on the farms leave the farms in the wintertime after their work is over and go into the industrial centers or into the cities to find employment and would be counted there instead of at their homes.

Mr. WILLIAMSON. And to California.

Mr. ROBSION of Kentucky. Well, it is all right to go to California. That is a good place to go.

Mr. KETCHAM. Will the gentleman yield at that point?

Mr. ROBSION of Kentucky. I yield.

Mr. KETCHAM. Does not the gentleman think that the first of November would be by far the preferable for agriculture when you are thinking of the accuracy of statistics with reference to agriculture?

Mr. ROBSION of Kentucky. Certainly not. You will find the farmers on the farm during the farming season.

Mr. MANLOVE. Will the gentleman yield?

Mr. ROBSION of Kentucky. Yes.

Mr. MANLOVE. I want to call the gentleman's attention to the fact that many of the crops are not even harvested and the farmers would not know in November what their yields were.

Mr. RANKIN and Mr. KETCHAM rose.

Mr. ROBSION of Kentucky. Do not take up all of my time.

Mr. RANKIN. I will yield the gentleman further time to make up for any time I may use now.

I want to call the gentleman's attention to the fact that I have here a list of the dates on which all censuses have been taken:

In 1790 it was taken on the first Monday in August.
In 1800 it was taken on the first Monday in August.
In 1810, first Monday in August.
In 1820, first Monday in August.
In 1830, the first of June.
In 1840, the first of June.
In 1850, the first of June.
In 1860, the first of June.
In 1870, the first of June.
In 1880, the first of June.
In 1890, the first of June.
In 1900, the first of June.
In 1910, April 15.

In 1920 was the only time it was ever attempted to take it in the wintertime and that census began on January 1.

HOW MANY ILLEGAL ALIENS?

Mr. ROBSION of Kentucky. I shall support an amendment to the bill urging the enumerators in taking the census to discover as far as may be possible the names and addresses of the aliens who are now in this country illegally. We are told on respectable authority that there are now from 2,500,000 to 3,000,000 men and women in this country without right. They were bootlegged into our country. We have thousands of miles of border and seacoast. Millions of people are anxious to come to this country, and they are coming into this country illegally by the tens of thousands. I strongly favor the recommendations of Secretary of Labor Davis to require all aliens in this country to register, so that we may determine who are here legally and those who are here illegally, and report those who have no right to be in this country. It is very important that our immigration laws be enforced, and that it be known to the world that we are enforcing them.

Now, on the next proposition, ladies and gentlemen, I am opposed to counting aliens so far as that determines representation in the House or in the Electoral College. I shall not enter into the legal phase of this question. This has been discussed fully. I know there are two schools of thought. Some hold that they must be counted and others hold it is not necessary to count them. I think it is a political question, and whatever action the Congress would take on it would not be disturbed by the Supreme Court of the United States.

I OPPOSE COUNTING ALIENS

According to the census of 1920, we have nearly 14,000,000 persons born in foreign lands in this country. I am inclined to think a correct census would show that we now have somewhere between 15,000,000 to 18,000,000 persons of foreign birth, and according to best available information from 2,500,000 to 3,000,000 came in illegally. About 75 per cent of these persons of foreign birth live in the great cities of our country, and the other 25 per cent live in the villages, small towns, and rural sections. Some 6,000,000 to 8,000,000 of these persons from foreign lands have never become naturalized, and they are aliens. I have no feeling against aliens. We have given them protection, liberty, freedom, and opportunity, and they have been urged to become citizens, yet they do not think enough of this country to become citizens. If they are included in apportioning the House of Representatives and Electoral College they would represent from 20 to 30 Members of the House of Representatives, and from 20 to 30 votes in the Electoral College. I am unwilling for them to make up the House of Representatives and to help elect the President of the United States. [Applause.]

SLACKERS

My mind, ladies and gentlemen, goes back to the World War. We had hundreds of thousands of these aliens in this country, able-bodied young men within the draft age, who came from the allied countries, and while American boys were bleeding and dying on Flanders Field for this country, the allied countries, and to save the civilization of the world, these aliens claimed their exemption, hid behind the American flag, and received wages of from $5 to $20 per day, while our American boys gave up their jobs and opportunities and were paid from $1 to $1.10 a day. Now, I am unwilling for these aliens to be counted in making up the House of Representatives and the Electoral College. It was never the intention of our forefathers to give these aliens such a large say in our government. They are not citizens, you can not force them to help defend this country, and why should they have representation in Congress or in the Electoral College. [Applause.]

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. ROBSION of Kentucky. Does the gentleman want to dispute that statement?

Mr. SCHAFER of Wisconsin. I dispute it in so far as the facts will show that thousands and thousands of aliens fought and bled and died on the battle fields of France, and many thousands of them came from Milwaukee and from Wisconsin.

Mr. ROBSION of Kentucky. Yes; and by act of Congress they are citizens, and I want every one of them counted when we take the census. Let us count them. [Applause.]

Mr. DOWELL. Will the gentleman yield?

Mr. ROBSION of Kentucky. Yes.

Mr. DOWELL. Is it not also true that they became American citizens by reason of their service?

Mr. ROBSION of Kentucky. Yes. I would be willing to go a little further and not only count them but count the father and the mother who bore them, who are living here and who gave them to the country. [Applause.]

It is the six to eight million who did not fight but who hid behind the flag and enjoyed the prosperity of this country that I am thinking of, and when our boys came back from Flanders Field they found these aliens in their jobs, and a lot of them have still got their jobs.

It is important. The aliens in this country will make up 20 to 30 of the membership of this House, and this might mean the control of the House. That means 20 to 30 votes in the Electoral College to elect the President of this great country. This might decide the Presidency. In one congressional district in this country only a few thousand citizens voted last year. There were several hundred thousand aliens living there, yet that district has a Representative in this House, and the aliens there have just as much power in representation as citizens living in my district.

Mr. HOCH. Will the gentleman yield?

Mr. ROBSION of Kentucky. I yield.

Mr. HOCH. The question of interpretation of the word "person" is, I confess, a very interesting one from a constitutional standpoint.

This fact has not been suggested. In the provisions of section 2 of the fourteenth amendment it provides that if a State shall deny suffrage to any of the male inhabitants of such State, being 21 years of age and citizens of the United States, are in any way abridged, and so forth, the basis of representation therein shall be reduced in the proportion in which the number of such male citizens shall bear to the whole number of male citizens 21 years of age in such State. Now, suppose in the State of Pennsylvania there are 500,000 aliens and also 500,000 American citizens between 21 and 30 years of age. There is no question but Pennsylvania would have the right to deny suffrage to those persons between 21 and 30 years of age, as the State has the right to fix the age of suffrage. If they did that, as they would have a perfect right to do under the Constitution, we would have the anomalous situation of a refusal to count 500,000 American citizens between 21 and 30 years of age and counting 500,000 aliens in the State. Is not that an anomalous situation?

Mr. ROBSION of Kentucky. You do not have to convince me. I am with you on the proposition. I am opposed to counting the aliens.

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. ROBSION of Kentucky. For a question.

Mr. SCHAFER of Wisconsin. They have eight Representatives from the State of Mississippi with 112,500 votes, and only 13,816 votes were cast in the district of the gentleman from Mississippi [Mr. RANKIN].

Mr. RANKIN. They are so well satisfied down there in that district they do not want to vote.

Mr. ROBSION of Kentucky. The gentleman from Wisconsin is not seeking information.

Mr. SCHAFER of Wisconsin. The gentleman from Mississippi is talking about equal representation.

Mr. ROBSION of Kentucky. In my State every American citizen over 21 years of age, who has lived there the required time, be he rich or poor, black or white, is given the right to vote. So there is no criticism of Kentucky.

Mr. SCHAFER of Wisconsin. Thirteen thousand eight hundred and sixteen votes in the district of the gentleman from Mississippi [Mr. RANKIN]—and eight Members from the whole State only have 112,550 votes—do you call that equality of representation?

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

Mr. RANKIN. I yield to the gentleman five minutes more.

Mr. ROBSION of Kentucky. Is it the idea of the gentleman from Wisconsin that two wrongs make a right? The question of Mississippi is not up now. Is the gentleman from Wisconsin willing by his vote to let the aliens of this country who are here, who have been urged by organizations and individuals to become American citizens but who refuse to do so, have the same rights as our citizens? It is up to the gentleman from Wisconsin and others to say whether or not we are going to let them through these 20 or 30 additional Representatives select and control the House of Representatives and perhaps elect the President of the United States.

So far as I am concerned, I hope some day we will pass a law that requires that when an alien has lived here a reasonable time, enjoyed our freedom, our opportunities, and our prosperity it will be up to him to apply for citizenship and become a citizen, and get himself in a position so that when peril threatens we can call him to the defense of our country, and if he fails or

refuses let him leave the country. Let him get under the flag and defend it or get out. [Applause.]

Mr. MANLOVE. Let me say to the gentleman that at the last session I introduced a bill exactly of that character.

Mr. ROBSION of Kentucky. I shall support it. I am willing to support an amendment to this bill which provides that any man who has heretofore in good faith declared his purpose to become an American citizen shall be counted in making up representation. [Applause.]

CITIZENS LOSE—ALIENS GAIN

As an illustration how unfairly the counting of aliens will result, I wish to point out that Kentucky has a population of about 2,500,000 made up of both native-born and naturalized citizens, largely native born, and has only a few thousand aliens. If aliens are to be counted in making up representation in the House of Representatives and votes in the Electoral College, it is now estimated that Kentucky will lose two Members of the House of Representatives and two votes in the Electoral College, while States having a large alien population will gain Members in the House of Representatives and votes in the Electoral College.

It is unfair to crowd the Members out of the House of Representatives and take votes out of the Electoral College from the citizens and give these to aliens. That is the logical effect. I know this was never intended by the framers of the Constitution.

Furthermore, a very large majority of these aliens are located in the large cities. To count the aliens means to take representation and votes from American citizens in the rural sections and give that representation, votes, and power to aliens in the great cities, and in the last analysis it takes control from the rural sections of the country and places that power and control in the great cities.

If this bill, when it comes to a final vote, still provides for the counting of aliens in making up representation in the House of Representatives and votes in the Electoral College, I shall be compelled to vote against it. In the meantime, I shall use whatever power and influence I may have to amend the bill to protect the citizens of this country. [Applause.]

I also oppose that part of the bill that attempts to apportion the House of Representatives in 1929, when the Constitution provides that this apportionment shall be made after the taking of the census. There is no good reason why this apportionment should not be deferred until after the census is taken in 1930. There is no provision in the Constitution to make this apportionment before the census is taken.

I wish to thank you, ladies and gentlemen, for your patient hearing. [Applause.]

Mr. FENN. Mr. Chairman, I yield 10 minutes to the gentleman from California [Mr. ENGLEBRIGHT].

Mr. ENGLEBRIGHT. Mr. Chairman, gentlemen and gentlewomen of the House, I understand that to the census and reapportionment bill now pending before the House an amendment will be offered excluding aliens from the count on which the apportionment of Representatives is based. The proponents of such an amendment base its constitutionality on the assumption that it was not intended by Article I, section 2, paragraph 3 of the Constitution and by section 2 of the fourteenth amendment to include aliens in the count for the apportionment of Representatives. They arrive at their conclusions in this matter by the interpretation they place upon the word "persons" in paragraph 3, section 2 of Article I, and section 2 of the fourteenth amendment, and by fortifying this interpretation with a long line of legal reasoning and by the utter disregard of the facts and history surrounding the creation of the acts.

Inasmuch as there are no court decisions construing the constitutional provisions on this particular point, the question will be considered in the light of the ordinary meaning of the word "persons," the history of the apportionment provision in the Constitutional Convention, the history of the fourteenth amendment, and past congressional construction of the provision.

The word "person" is defined by the Standard Dictionary as follows:

> A human being as including body and mind; a man, woman, or child; an individual. An individual and rational being; a being possessed of self-conscientiousness, recognition, memory, powers of rational inference, and with ethical and esthetic feeling, conceptions and ideal as distinguished not only from the inorganic but also from the merely organic and animal existence.

There is nothing in the foregoing typical definitions to warrant the exclusion of aliens from the meaning of the word "person" as including all human beings. Words in the Constitution are given the meaning they had at common law or in common use, their "natural and obvious" sense, unless there are strong reasons to the contrary. Pollock *v.* Farmers Loan and Trust Co. (1895), 158 U. S. 601, 618; Gibbons *v.* Ogden (1824), 9 Wheat. 1, 188; Martin *v.* Hunter (1816), 1 Wheat. 304, 326; Tennessee *v.* Whitworth (1886), 117 U. S. 139, 147; Veazie Bank *v.* Fenno (1869), 8 Wall. 533, 542; Lock *v.* New Orleans (1886), 4 Wall. 172. There can be no question that at common law, and in common use at the time of the adoption of the provision and since, an alien was and has been a "person."

Section 3 of paragraph 2 of Article I of the Constitution prescribes that:

> Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. * * *

The phrase in this section relating to the basis of apportionment as originally adopted by the Constitutional Convention reads as follows:

> The whole number of free citizens and inhabitants of every age, sex, and condition, including those bound to servitude for a term of years and three-fifths of all other persons, not comprehended in the foregoing description (except Indians not paying taxes).

This was referred to the Committee on Style, whose duty it was to refine the language. On September 12, 1787, the Committee on Style reported the article back to the Constitutional Convention in its present form in the Constitution, having substituted the word "persons" for the longer phrase of "free citizens and inhabitants of every age, sex, and condition," and so forth. The substitution of the word "persons" for the longer phrase was passed by the Constitutional Convention without any comment or debate, so far as the records disclose and was adopted.

The use of the words "free citizens and inhabitants" in the original draft undoubtedly indicates that it was contemplated that there would be free inhabitants who would not be citizens and that they should be counted in the basis for apportionment of Representatives. The necessary and only inference is that the substitution was regarded as a mere change in style and not in substance. The evidence that "persons" was taken to mean the same as "citizens and inhabitants," shows that the word was used in its common sense and that the Constitutional Convention intended the word "persons" to include "aliens or noncitizens."

The internal evidence of the provision is against restricting the word "persons" to mean citizens. The word "person" is used in opposition to "citizen" in the second paragraph of the same section: "No person shall be a Representative who shall not have * * * been seven years a citizen of the United States." And also in the third paragraph of section 3, of Article I: "No person shall be a Senator who shall not have been * * * nine years a citizen of the United States." And in Article 2, section 1, paragraph 5: "No person except a natural born citizen or a citizen of the United States, at the time of the adoption of this Constitution shall be eligible to the office of President." These provisions in which aliens are expressly excluded show conclusively that the Constitutional Convention took into consideration the presence of and contemplated presence of aliens in the United States. The argument that aliens were not considered by the Constitutional Convention can be further met by the power given to Congress in the fourth paragraph of section 8 of Article I, of power "to establish an uniform rule of naturalization." Every Congress that acted upon the apportionment provision of Article I of the Constitution and every apportionment that was made in reliance on that article included inhabitants who were not citizens. The protection of the fifth amendment, using the word "persons," has always been held to extend to aliens. Wong Wing *v.* United States (1896), 163 U. S. 228, 238; Li Sing *v.* U. S. (1901), 180 U. S. 486, 495; United States *v.* Brooks (D. C. Mich., 1922), 244 Fed. 908; United States *v.* Wong Quong Wong (D. C. Vt., 1899), 94 Fed. 832.

The fourteenth amendment only changed the provision of paragraph 3, section 2, article 1, of the Constitution by omitting reference to direct taxes and by eliminating language relating to slaves. It is evident that there was no intention to use the word "persons" with a meaning other than its original meaning. The fourteenth amendment was framed with the inten-

tion of including aliens in the count for apportionment of Representatives, as indicated by the rejection by the Congress of proposals to base representation on the number of citizens or the number of voters.

On December 5, 1865, in the House of Representatives (Cong. Globe, 39th Cong., 1st sess., p. 9), Mr. Schenck, in pursuance of previous notice, introduced a joint resolution proposing to amend the Constitution of the United States to apportion Representatives according to the number of votes in the several States. The resolution was read the first and second time and referred to the Committee on the Judiciary. On the same day, Mr. Stevens also introduced the following joint resolution which was referred to the Committee on the Judiciary:

Representatives shall be apportioned among the several States which may be within the Union, according to their respective legal voters; and for this purpose, none shall be named legal voters who were not either natural-born citizens or naturalized foreigners.

On January 16, 1866, the chairman of the subcommittee on the basis of Representatives, reported to the joint committee on reconstruction that it had adopted the following article:

Representation and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers, counting the whole number of citizens of the United States and in each State: *Provided*, That when the elective franchise shall be denied or abridged in each State, on account of race, creed, or color, all persons of such race, creed, or color shall be excluded on the basis of representation.

Pending the consideration of this, Mr. Conkling moved to amend the proposed article by striking out the words, "citizens of the United States in each State," and inserting in lieu thereof, the words "persons in each State, excluding Indians not taxed." The Conkling amendment was adopted by the Committee on Reconstruction by a vote of 11 to 3, absent and not voting, 1. The article as amended and reported to Congress read:

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed, etc.

When the matter was brought before the House, Mr. Conkling, who had offered the substitute, stated as follows:

It has been insisted that "citizens" of the United States, and not "persons," should be the basis of representation and apportionment. These words were in the amendment as I originally drew it and introduced it, but my own judgment was that it should be "persons," and to this the committee assented. There are several answers to the argument in favor of "citizens" rather than "persons." The present Constitution is and always was opposed to this suggestion. "Persons," and not "citizens," have always constituted the basis. Again, it would narrow the basis of taxation and cause considerable inequalities in this respect, because the number of aliens in some of the States is very large, and growing larger now when immigrants reach our shores at the rate of more than a State a year. Again, many of the States now hold their representation in part by reason of their aliens, and the legislatures and peoples of these States are to pass upon the amendment. It must be made acceptable to them. For these reasons the committee has adhered to the Constitution, as it is proposing to add to it only so much as is necessary to meet the point aimed at. (Congressional Globe, 39th Cong., 1st sess., p. 359.)

Mr. LOZIER. Mr. Chairman, will the gentleman yield?

Mr. ENGLEBRIGHT. Yes.

Mr. LOZIER. As I understand the gentleman, Mr. Conkling's argument against the exclusion of aliens was based in part upon the ability of the aliens at that time to prevent the ratification of that amendment?

Mr. ENGLEBRIGHT. Not by any means. He was simply endeavoring to follow out the Constitution as he interpreted it.

Mr. LOZIER. I understood the gentleman to read that he gave as one reason for it that the amendment would have to be ratified by the people in these States, many of whom were aliens.

Mr. ENGLEBRIGHT. That is a matter of interpretation.

On June 31, 1866, in the House of Representatives (Cong. Globe, 39th Cong., 1st sess., p. 535), Mr. Schenck offered as a substitute for the basis of representation, an amendment to be apportioned on the number of "citizens" and voters. In the debate that followed, Mr. Stevens said:

If I have been rightly informed as to the number, there are from 15 to 20 Representatives in the Northern States founded upon those who are not citizens of the United States. In New York, I think, there are three or four Representatives founded upon the foreign population, three certainly. And, so it is in Wisconsin, Iowa, and other Northern States. Let us try to be practical. On the 5th day of December last, I introduced a proposition to amend the Constitution founding representation upon voting basis and excluding the foreign population as the proposition of my friend from Ohio does. It was dear to my heart, for I had been gestitating it for three months. But when I consulted the committee of fifteen and found that the States would not adopt it, I surrendered it.

The Schenck substitute, that is substituting the words "citizens or voters" for the word "persons," was rejected by the House by a vote of 131 to 29, not voting 23.

In the Senate while considering the question of the substitution of the words "voters or citizens" for the word "persons" Senator Wilson (Congressional Globe, 39th Cong., 1st sess., p. 2986) stated:

After the remarks made by the Senator from Ohio I desire to simply say that I regard this amendment as a proposition to strike from the basis of representation 2,100,000 unnaturalized foreigners in the old free States, for whom we are now entitled to 17 Representatives in the other House. It is simply a blow which strikes the 2,100,000 unnaturalized foreigners who are now counted in the basis of representation. I shall vote against it.

The Senate refused to change the word "persons" to that of "citizens or voters."

These statements and others that could be quoted during the consideration and debate on the fourteenth amendment in the House and in the Senate show beyond question a contemporaneous legislative construction of the word "persons" as inclusive of aliens and an intention by its use to continue that meaning in the fourteenth amendment.

Section 2 of the fourteenth amendment as adopted reads as follows:

Representation shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crimes, the basis of representation therein shall be reduced in the proportion which the whole number of such male citizens shall bear to the whole number of male citizens 21 years of age in such State.

Internal evidence in this section of the fourteenth amendment supports the argument that the word "persons" is not to be restricted to citizens. It is used in contrast to the phrases "Male inhabitants * * *, being citizens of the United States," and "male citizens." "Indians not taxed" are excluded from the number of "persons," which would have been unnecessary if "persons" did not include noncitizens. Light is cast indirectly on the inclusiveness of the word "persons" in the apportionment clause by United States *v.* Kagma (1886), 118 U. S. 375, 378, which points out that the exclusion of Indians not taxed implies the inclusion of Indians that are taxed. While the word "persons" as used in section 2 of the fourteenth amendment has not been construed by the courts, it is highly persuasive that in the due process and equal protection clauses of section 1 of the amendment the word "persons" has always been held to include aliens. Truax *v.* Raich (1915), 239 U. S. 33; Colyer *v.* Sheffington (D. C. Mass., 1920), 265 Fed. 17; Yick Wo *v.* Hopkins (1886), 118 U. S. 356, 369; United States *v.* Lee Huen (D. C., 1902), 118 Fed. 442, 445.

The natural meaning of the word "persons," the evidence of the records of the Constitutional Convention in framing paragraph 3, section 2, of Article I of the Constitution, the history of the fourteenth amendment, and the uniform past congressional construction of the term by Congress in its apportionment legislation proves that the term "persons" as used in section 2 of the fourteenth amendment is intended to include aliens as well as citizens.

Mr. Chairman, with reference to the effect of aliens as reflected in the voting population and representation, I have prepared this table showing the number of votes from various States in the last election; the number of Representatives from these States; the ratio that various States bear to other States as reflected in their vote in 1928, and the basis of congressional representation based upon the ratios of the votes as cast by the various States.

State	Total vote 1928	Number Congressmen	Ratio to Kentucky	Number Congressmen on basis of Kentucky	Ratio to Mississippi	Number Congressmen on basis of Mississippi	Ratio to Alabama	Number Congressmen on basis of Alabama	Ratio to Virginia	Number Congressmen on basis of Virginia	Ratio to South Carolina	Number Congressmen on basis of South Carolina
New York	4,466,072	43	4.75	52	29.5	236	17.9	179	14.6	146	65.6	459
Pennsylvania	3,150,615	36	3.35	36	20.8	166	12.6	126	10.3	103	46.3	324
Illinois	3,107,489	27	3.30	36	20.5	164	12.4	124	10.1	101	45.6	319
Ohio	2,508,346	22	2.66	29	16.6	132	10.0	100	8.2	82	36.8	257
California	1,796,656	11	1.91	21	11.8	95	7.2	72	5.8	58	26.4	184
Kentucky	940,604	11										
Mississippi	151,692	8										
Alabama	248,982	10										
South Carolina	68,605	7										
Virginia	305,358	10										

The 1928 election brought out the highest percentage of votes with reference to population that was ever cast in the history of the country. It is conceded that the number of votes cast by a locality bears an approximate ratio to the citizenship population of that territory. The old accepted rule was that one vote approximately represented five people. Now that the franchise is exercised by women, the ratio is approximately one vote to each two and a half people. Therefore, if you take the vote of any particular State, you should be able to arrive at a reasonable conclusion as to what the population of the State should be. In 1928 each political party, due to the intenseness of the campaign, exerted every effort to bring out as large a vote as possible. The percentage of voters in each State should be about equal with reference to its citizenship population.

Mr. O'CONNOR of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. ENGLEBRIGHT. I decline to yield at this time.

As indicated in the table, New York, in the presidential election of 1928, cast a total vote of 4,466,072. This State at present has 43 Representatives. The total vote cast in the presidential election of 1928 for Kentucky was 940,604. The ratio of the vote of the State of Kentucky with the vote cast in the State of New York is 4.75, or, in other words, the State of New York cast 4.75 times as many votes as the State of Kentucky.

Therefore, taking the vote of Kentucky as a basis for an equal ratio of representation, New York State should then be entitled to 52 Representatives. New York's representation based upon the vote cast in the State of Mississippi would entitle the State of New York with reference to the ratio of the respective votes to 236 Representatives. New York's representation based upon the vote cast in the State of Alabama would entitle the State of New York to 179 Representatives. New York's representation based upon the vote cast in the State of Virginia would entitle the State of New York to 146 Representatives. New York's representation based upon the vote cast in the State of South Carolina, South Carolina's vote bearing a ratio of 65.6 to that of New York, would entitle the State of New York to 459 Representatives. I have carried the ratios through based upon the votes cast by the States of Pennsylvania, Illinois, Ohio, and California, California being entitled to 184 Representatives as based upon the ratio of the vote cast by South Carolina.

Mr. RANKIN. Will the gentleman yield? I do not want to question the gentleman's statement, but I see by the chart that he has 11 Congressmen from the State of South Carolina. I make the point of order that some of them must have slipped away, as only 7 have shown up so far.

Mr. ENGLEBRIGHT. I thank the gentleman for calling the matter to my attention. That is a mistake of the draftsman. The figures should be seven.

From the outline of the foregoing chart which clearly indicates what the ratio of the respective representations will probably be, if we count only citizens as a basis for the apportionment of Representatives, let me suggest to the proponents of this measure that they consider the matter very carefully, for if only citizen population is counted as a basis for the apportionment of Representatives, then surely a demand will be made that citizens who are not allowed to vote shall not be counted. The figures indicate, as reflected by the votes, that either many of the States now have a much larger representation than they are entitled to, or that there is a large portion of their citizen population that is not allowed to vote. However, let me get back to the original question which is to the constitutionality of an amendment to the pending bill to exclude aliens from the count for the basis of representation. I believe there is no question as indicated from the history of the drawing of the provisions in the Constitution that such an amendment would be unconstitutional. A provision for the exclusion of aliens from the count for the basis of apportionment of Representatives should come before this body in the form of a proposed constitutional amendment, where the merits or demerits of such a proposition could be thoroughly discussed. I, therefore, trust that the House will vote down any such an amendment to the present bill, as I feel that the subject as brought up at this time is principally being advanced for the purpose of defeating the apportionment bill.

Mr. FENN. Mr. Chairman, I yield 10 minutes to the gentleman from New York [Mr. LAGUARDIA].

Mr. LAGUARDIA. Mr. Chairman, stripped of all flag waving and camouflaged opposition, the case of every Member who is opposed to this bill boils down to the fact that in the proposed apportionment his State will lose one or two Members. Let us be perfectly frank about it. According to the same estimate my State will lose one Member. I have absolutely no misgivings that if my State loses one Member, it will be my district that will be eliminated. I know that there are powers in both parties in my State that will agree to that. I am willing to take my chances and go into another district. They are not going to get rid of me that quickly. Even if they do, I repeat what I said every time this bill has been considered by the House that our constitutional duty and equal and just representation is of far greater importance than the political fortunes of individuals.

Mr. THURSTON. Mr. Chairman, will the gentleman yield?

Mr. LAGUARDIA. No. I want to answer just a few things. The gentleman from Kentucky [Mr. ROBSION] raised the matter of the question of aliens who sought exemption from the draft. The figures at the War Department will show that the percentage of native Americans who sought exemption is greater than of aliens who sought exemption, and you can not deny that fact. It is not fair to come here now and slander aliens.

Mr. DOWELL. But the American had to state facts that exempted him and all the alien had to do was to present the fact that he was an alien and not subject to the laws of the country.

Mr. LAGUARDIA. But the percentage in natives was greater than that of aliens who sought exemption, no matter what you say. It is a question whether we could have drafted aliens, but there was no objection raised at all. On the question of counting aliens I will tell my friend from Mississippi [Mr. RANKIN] what I will do. Let him put into his amendment that he is going to exclude from the count in establishing State representation both aliens and citizens who, by the laws of any State are not permitted to vote, and I shall vote with him. [Laughter.]

Mr. RANKIN. That is already in it. The Supreme Court of the United States has decided that. I will vote for the gentleman's amendment.

Mr. LAGUARDIA. It has been stated here by the gentleman from Mississippi [Mr. RANKIN] and others that there are 3,000,000 aliens in this country unlawfully. Gentlemen, please stop and consider that statement: Three millions unlawfully. If they came 500 on a ship—and it is impossible to bring 500 or any such number surreptitiously into the United States at one time—it would require 6,000 ships to bring them over.

Mr. BEEDY. In how long a time? The gentleman is enlightening us.

Mr. LAGUARDIA. Well, the gentleman tried to help me this morning but did not make much of a success of it.

I am talking about European aliens. Most of the references and the nasty innuendos were directed to European aliens. Now, I say that there can not be anything like 3,000,000 unlawful European aliens in this country. There can not be anything like one-half that amount as has been suggested

by other Members, fixing the figure, I believe, at 1,600,000. I say there can not be even one-quarter that amount, and I doubt very much that there are over 200,000 European aliens in this country unlawfully. If the gentlemen will only calmly consider such a proposition, the absurdity of these figures will be obvious. I repeat, gentlemen, that if you take the number of ships that arrived from Europe every week since 1924, or even since 1921 or 1923, you will see that any such figure is simply out of the question, and is so exaggerated as to become ridiculous. Now, an alien who arrived prior to the act of July, 1924, is not deportable after five years, except for certain specific causes. Aliens who arrived subsequent to the act of 1924, unlawfully, are subject to deportation, and again I repeat, at the risk of becoming tiresome, the figure does not come anywhere within the 1,000,000 mark, and I say that it is closer to 200,000 than it is to the 1,000,000 mark. Now, gentlemen, the trans-Atlantic ships average a capacity from 2,000 to 3,000 passengers. I believe there are only very few that will carry 3,000 passengers. It is safe to say, perhaps, the average is 750 to 1,000 passengers. Surely every passenger on board is not a stowaway. It is simply impossible for a ship to bring more than a few stowaways at a time. Human beings must be fed; they occupy space. If there are more than a few stowaways on board, everybody on the ship knows it, and they could not possibly land in the United States. Yes; some say that they come in through Canada, but the same applies to Canada.

These aliens can not swim across the Atlantic to land in Canada. They must necessarily come on ships, and they are as carefully inspected and examined at Canadian ports as they are at United States ports. If an alien is not properly documented for Canada, he can not enter. If he intends to come to the United States, we have the American immigrant inspectors right there to examine and pass upon his rights to enter the United States, so that number can not be very great. And the same applies as to European aliens coming through Mexico. I will admit that there have been several hundreds and several thousands entering the United States unlawfully, but surely not to such an extent as to create the menace and the dangers that have been depicted and described on the floor of this House to-day and on other occasions.

To illustrate the number of ships and the tonnage required to transport a million people, let me call your attention to the transportation problem of getting the American Expeditionary Forces back from France. I will not compare it with the task of getting them over because that was under war conditions and it naturally required a greater length of time. But everyone will remember that every available ship in the world was commandeered into service to bring back the boys from France after the war. It took 476 ships nine months to bring back 1,400,000 troops. These ships included 13 large German passenger ships which were used exclusively in transport service, making two trips a month each. It took all the British, French, and Italian ships that were available besides the thousands of troops that were brought back on ships of the Navy. You will all remember the way these boats were packed and the tremendous task it was to get the boys back. Now, gentlemen, that gives you an idea what it means when you talk about bringing over 3,000,000 persons from Europe.

Mr. RANKIN. Mr. Chairman, will the gentleman yield there?

Mr. LaGUARDIA. I will if you give me time.

Mr. RANKIN. I have no time to yield.

Mr. LaGUARDIA. So there is nothing in that proposition. I do not believe that at the utmost there are more than 250,000 aliens here unlawfully. If we should come in here with a resolution calling for a constitutional amendment to exclude aliens from the count in fixing your representation, it would be pretty difficult to argue against that. But here you have a grave constitutional question. The gentleman from Mississippi [Mr. RANKIN] stated that we had injected certain organizations into this discussion. I want to say that we did not inject any organization into this discussion at all, but that the organizations injected themselves. We held hearings in the Committee on the Judiciary on this proposed constitutional provision to exclude aliens. We held them in February, 1929.

The gentleman from Kansas [Mr. HOCH] made a very splendid presentation of his case. A witness from my State, one William H. Anderson, formerly superintendent of the Anti-Saloon League, said it did originate with him. He said:

> It originated in my own mind, and so far as I know from the record I am the first person who got it into the Congress of the United States.

He, mark you, got it into the Congress. I say that is significant. That Mr. Anderson, formerly of the Anti-Saloon League, said:

> Any idea that there is any ulterior purpose behind it is absurd. There is nothing behind it except the national benefit that would flow, as is believed, to the prohibition cause, because most of these Congressmen who would be cut out are opposed to the prohibition policy.

Then, gentlemen, was when the Anti-Saloon League injected itself into the discussion. We did not do it. They did it themselves.

Mr. RANKIN. The gentleman is not charging me with that?

Mr. LaGUARDIA. No; I am not charging the gentleman with that.

Mr. HOCH. Of course, I never heard of that man.

Mr. LaGUARDIA. I know. The gentleman is too respectable for that. Now, let me read this choice bit of literature from the pen of Mr. William H. Anderson, who brazenly admits he is seeking revenge, and I am too generous perhaps in giving the details of why he seeks revenge. This is what he says, and I read also the letterheads of Mr. Anderson and his 1-man organization:

> [Protestant Americanism in action for self-defense. American Protestant Alliance. A practical basis of union to promote militant Protestantism without raising any real religious issue. William H. Anderson, founder and general secretary; Mause M. Odell, treasurer. Phone Pennsylvania 3514. Room 421, Bristol Building, at 500 Fifth Avenue, corner Forty-second Street, New York City. Allied Protestant American, edited and published by the general secretary, ultimately weekly—$1 per year. Other cooperating militant Protestant publications—The New Menace, weekly—$1; The Protestant, monthly—$1; The Fellowship Forum, weekly—$2]
>
> *To the Members of the National House of Representatives:*
>
> The statement on the floor of the House yesterday was not correct. While the "stop-alien-representation" proposal originated by me 10 years ago and introduced by Mr. STALKER at my request in the House now nearly 2 years ago, H. J. Res. 20 in the present session is for an amendment to the Constitution. I have great respect for the sincerity and patriotism of those who to give insurance of safety have proposed the pending emergency statutory relief. Nobody knows whether it is constitutional or not until the Supreme Court passes on it or refuses to touch it as a legislative matter, and I believe the imminent peril justifies an attempt to secure an authoritative ruling.
>
> If this statutory provision is not adopted, the American Protestant Alliance will at once start a drive to put the amendment through at the first regular session, because it will still be possible to get it ratified before the next apportionment is actually made.
>
> In patriotic good faith I am doing my utmost to get this proposal adopted quickly. However, if delay for which we are not responsible hands to the American Protestant Alliance on a silver platter this acute, throbbing, popular, patriotic issue to work on for the next 10 years and thereby materially helps the alliance, as the correlation of the individual Protestant church constituency of the Anti-Saloon League, with the individual membership of the klan, to become the most potent force of the sort ever known in America, we shall submit to the affliction with becoming resignation.
>
> Incidentally, now that I have achieved a complete moral "comeback," any such result would complete, sweeten, and intensify my revenge against the wet, alien forces behind Tammany which, by the most infamous prostitution of criminal law and judicial process known to the history of American reform movements, locked me up in prison during the 1924 campaign, though I was not even "technically" guilty of the slightest violation of any law, and before my appeal was even argued, solely to get me out of Al Smith's way for the Presidency.
>
> Yours for the triumph of truth,
>
> WILLIAM H. ANDERSON,
> *General Secretary American Protestant Alliance.*

But when you consider the genesis of the idea, when the man who claims to be the author and originator of the idea and his organizations come before a committee of the House, they bring themselves—that is, the Anti-Saloon League and the Ku-Klux Klan—into the discussion.

I will make another proposition: If you put in your amendment a provision that on the passage of this law any alien who is here the required number of years, who is here lawfully and is of good character and is vouched for, may on presenting those facts become a citizen of the United States, I will vote for your amendment. But it is not fair to say that these aliens do not want to become citizens, when you do not permit them to. Put men with sympathetic understanding in the Naturalization Bureau and make the test of loyalty to this country the standard instead of trick questions in order to disqualify applicants and we will not have such a large alien population.

Since 1924 immigration has been limited. When the count is taken in New York City you are going to find that there is nothing like the figures quoted by the gentleman from Iowa [Mr. THURSTON]. These old people who could not be natural-

ized because they were digging ditches and building your subways and working in your factories day and night did not have a chance to acquire sufficient knowledge to go out and qualify for naturalization. Because you have made your requirements for citizenship so strict with mean trick questions and klan examiners that it is difficult and impossible for some of these people to qualify. Those old people are dying off. Their children are taking their places. Every one of those children is a native-born citizen. You can not exclude them from the count.

So that the great idea that the aliens should not be counted and be included as persons, as the framers of the Constitution provided, is all subterfuge. Mr. Anderson's idea is simply being used to defeat this bill. The big statesman thing to do and the honest, constitutional thing to do is to say: "I must vote for reapportionment, whether it hits my State or not." [Applause.] Because it is going to hit your State some of you resort to any subterfuge to defeat the clear mandate of the Constitution, and have the audacity to talk about loyalty of the aliens.

I repeat, that it is the clear mandate of the Constitution that we should reapportion this House every 10 years. The framers of the Constitution so intended, and it is my belief and firm conviction after carefully studying the debate on this question in the Constitutional Convention, that the framers intended that in providing for the enumeration every 10 years in connection with the reapportionment provision to make it mandatory. I can not see how any Member who is but slightly familiar with the genesis of that provision of the Constitution providing for apportionment can object to the bill now before the House. As a matter of fact, the Constitutional Convention had this question up for four or several days during the latter part of the month of June and early July.

After disposing of the question of whether representation should be based upon the question of wealth, and whether or not colored people should be counted, the question that the convention struggled with was that of fixing the apportionment at stated periods in order to carry out the idea of proportionate representation. When they adopted the present provision of the Constitution calling for a census every 10 years, and basing the apportionment according to that census, it was the belief of the Constitutional Convention—and you can not escape that conclusion if you read the debate—that it was mandatory. Pinckney, Randolph, Morris, all took part in the debate. It was left with the belief that there would be no time after a census, taken every 10 years, when the House would not be reapportioned. In fact, the 10-year amendment was one of the last to be adopted.

Let me read what I said on this question, quoting from the Constitutional Convention debates, when a reapportionment bill was before the House on May 18, 1928:

The question of apportionment had occupied the Constitutional Convention for several days in the consideration of the formation of Congress. All through the debate as to the formation of the two Houses, the Senate and the House, and the voting power of each State in the Congress the matter of proportionate representation was constantly referred to and discussed. The question came squarely before the convention on Thursday, July 5, 1787. Elbridge Gerry, of Massachusetts, delivered the report of a special committee which had been appointed a few days previously to study and make recommendations on the matter of apportionment. Omitting the matters not directly pertinent to the question of apportionment, the resolution reads:

"The committee to whom was referred the eighth resolution of the report from the Committee of the Whole House, and so much of the seventh as has not been decided on, submit the following report: That the subsequent propositions be recommended to the convention on condition that both shall be generally adopted. That in the first branch of the Legislature each of the States now in the Union shall be allowed 1 Member for every 40,000 inhabitants of the description reported in the seventh resolution of the Committee of the Whole House; that each State not containing that number shall be allowed one Member."

This brought the matter before the convention and was the subject of debate. An idea of the wide range of opinion, diversity of viewpoint, and bitterness of the debate may be gleaned from an extract taken from the remarks of Gouverneur Morris, of Pennsylvania. Reading from Madison's Debates:

"Mr. Gouverneur Morris thought the form as well as the matter of the report objectionable. It seemed in the first place to render amendments impracticable. In the next place, it seemed to involve a pledge to agree to the second part if the first should be agreed to. He conceived the whole aspect of it to be wrong. He came here as a representative of America; he flattered himself he came here in some degree as a representative of the whole human race; for the whole human race will be affected by the proceedings of this convention. He wished gentlemen to extend their views beyond the present moment of time, beyond the narrow limits of place from which they derive their political origin. If he were to believe some things which he had heard, he should suppose that we were assembled to truck and bargain for our particular States. He can not descend to think that any gentlemen are really actuated by these views. We must look forward to the effects of what we do. These alone ought to guide us. Much has been said of the sentiments of the people. They were unknown. They could not be known. All that we can infer is that if the plan we recommend be reasonable and right, all who have reasonable minds and sound intentions will embrace it, notwithstanding what had been said by some gentlemen. Let us suppose that the larger States shall agree; and that the smaller refuse; and let us trace the consequences.

"The opponents of the system in the smaller States will no doubt make a party and a noise for a time, but the ties of interest, of kindred, of common habits which connect them with the other States will be too strong to be easily broken. In New Jersey particularly he was sure a great many would follow the sentiments of Pennsylvania and New York. This country must be united. If persuasion does not unite it, the sword will. He begged that this consideration might have its due weight. The scenes of horror attending civil commotion can not be described, and the conclusion of them will be worse than the term of their continuance. The stronger party will then make traitors of the weaker and the gallows and halter will finish the work of the sword. How far foreign powers would be ready to take part in the confusions he would not say. Threats that they will be invited have, it seems, been thrown out. He drew the melancholy picture of foreign intrusions as exhibited in the history of Germany, and urged it as a standing lesson to other nations. He trusted that the gentlemen who may have hazarded such expressions did not entertain them till they reached their own lips. But, returning to the report, he could not think it in any respect calculated for the public good. As the second branch is now constituted, there will be constant disputes and appeals to the States, which will undermine the General Government and control and annihilate the first branch. Suppose that the Delegates from Massachusetts and Rhode Island in the Upper House disagree and that the former are outvoted. What results? They will immediately declare that their State will not abide by the decision and make such representations as will produce that effect. The same may happen as to Virginia and other States. Of what avail, then, will be what is on paper? State attachments and State importance have been the bane of this country. We can not annihilate, but we may perhaps take out the teeth of the serpents. He wished our ideas to be enlarged to the true interest of man instead of being circumscribed within the narrow compass of a particular spot. And, after all, how little can be the motive yielded by selfishness for such a policy?

"Who can say whether he, himself, much less whether his children, will the next year be an inhabitant of this or that State?"

Later on Mr. Morris continued. He objected to that scale of apportionment, to wit, 1 for every 40,000 inhabitants:

"He thought property ought to be taken into the estimate as well as the number of inhabitants."

John Rutledge, of South Carolina, concurred.

"The gentleman last up [Mr. Morris] had spoken some of his sentiments precisely. Property was certainly the principal object of society."

This gives an idea of the wide range of difference that existed in the convention at the time. While many were fighting hard to bring about as democratic form of government as was possible, they were confronted by determined, stern opposition.

On July 6 Gouverneur Morris sought to recommit the report of the committee. All seemed to favor that motion. Rufus King, of Massachusetts, in support of the motion, remarked that "he thought also that the ratio of representation proposed could not be safely fixed, since in a century and a half our computed increase of population would carry the number of Representatives to an enormous excess."

This view, indeed, was prophetic. Almost a hundred and fifty years have passed and we are confronted with that very situation. The population is increasing, and if we continue the same ratio adopted in 1910 the House will become so large as to be unwieldy and unworkable. Of course, I do not agree with other reasons urged by Mr. King at the time as to the necessity of considering wealth and property together with population. There may be some of my colleagues on the floor to-day who agree with that, but the times have so changed that if they do they surely do not dare to express such views.

Charles Pinckney agreed as to the matter of population. He was firm and decided in his opposition to any other factor being taken into consideration. Mr. Pinckney stated:

"The value of land had been found on full investigation to be an impracticable rule. The contribution of revenue, including imports and exports, must be too changeable in their amount, too difficult to be adjusted, and too injurious to the noncommercial States. The number of inhabitants appeared to him the only just and practicable rule. He thought the blacks ought to stand on an equality with whites."

Mr. Pinckney came from South Carolina, and I want to pause to call the attention of my colleagues on the Democratic side of the House to the last sentence of his remarks that I have just quoted.

"On July 9, Gouverneur Morris delivered a report from the committee of five members to whom was committed the clause in the report of the

ratio of Representatives in the first branch to be as 1 to every 40,000 inhabitants, as follows, viz:

"'The committee, to whom was referred the first clause of the first proposition reported from the grand committee, beg leave to report—

"'I. That in the first meeting of the Legislature the first branch thereof consist of 56 Members, of which number New Hampshire shall have 2; Massachusetts, 7; Rhode Island, 1; Connecticut, 4; New York, 5; New Jersey, 3; Pennsylvania, 8; Delaware, 1; Maryland, 4; Virginia, 9; North Carolina, 5; South Carolina, 5; Georgia, 2.

"'II. But as the present situation of the States may probably alter as well in point of wealth as in the number of their inhabitants, that the legislature be authorized from time to time to augment the number of Representatives. And in case any of the States shall hereafter be divided, * * * or any two or more States united, the legislature shall possess authority to regulate the number of Representatives in any of the foregoing cases upon the principles of their wealth and number of inhabitants.'"

Roger Sherman, of Connecticut, immediately inquired "on what principles or calculations the report was founded. It did not appear to correspond with any rule of numbers or of any requisition hitherto adopted by Congress."

Nathaniel Gorham, of Massachusetts, supported the committee report, and replied to the two reasons urged against it. Mr. Gorham stated:

"Two objections prevailed against the rate of 1 Member for every 40,000 inhabitants. The first was that the representation would soon be too numerous; the second that the West States, who may have a different interest, might if admitted on that principle by degrees outvote the Atlantic. Both these objections are removed. The number will be small in the first instance and may be continued so, and the Atlantic States, having the Government in their own hands, may take care of their own interest by dealing out the right of representation in safe proportions to the Western States. These were the views of the committee."

Edmund Randolph, of Virginia, expressed apprehension, which the attitude of the House to-day, almost 150 years later, seems to justify.

"Mr. Randolph disliked the report of the committee but had been unwilling to object to it. He was apprehensive that as the number was not to be changed till the National Legislature should please, a pretext would never be wanting to postpone alterations and keep the power in the hands of those possessed of it. He was in favor of the commitment to a Member from each State."

William Patterson, of New Jersey, was against it unless the future apportionments would be provided for.

Randolph, Patterson, Madison, and others then started the drive for the fixing of future apportionments. James Madison, jr., of Virginia, pointed out that the States "ought to vote in the same proportion in which their citizens would do if the people of all the States were collectively met."

A committee was then formed consisting of one member from each State. On Tuesday, July 10, Mr. King reported that the committee had decided to recommend that the first General Legislature should be represented by 65 Members in the following proportion, to wit: New Hampshire, by 3; Massachusetts, 8; Rhode Island, 1; Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; Georgia, 3. A lengthy discussion followed, with many amendments offered to slightly vary this apportionment. The following extract from the remarks of Gouverneur Morris is indeed apropos of what is taking place on the floor of this House to-day.

Again reading from the proceedings as recorded by Madison:

"Gouverneur Morris regretted the turn of the debate. The States he found had many representatives on the floor. Few he fears were to be deemed the representatives of America. He thought the Southern States have by the report more than their share of representation. Property ought to have its weight, but not all the weight. If the Southern States are to supply money, the Northern States are to spill their blood. Besides, the probable revenue to be expected from the Southern States has been greatly overrated. He was against reducing New Hampshire."

Then Mr. Randolph moved as an amendment to the report of the committee of five "that in order to ascertain the alterations in the population and wealth of the several States the legislature should be required to cause a census, and estimate to be taken within one year after its first meeting, and every — years thereafter—and that the legislature arrange the representation accordingly."

Mr. Randolph was quick to point out the weaknesses of future legislatures. He pointed out that if the "mode" was not fixed for taking the census, future legislatures may use such a "mode" as will defeat the object and perpetuate the inequality. He stated further, "if the legislatures are left at liberty they will never readjust the representation."

How prophetic!

The next day the debate continued. Hugh Williamson, of North Carolina, stated that the convention should make "it the duty of the legislature to do what was right and not leaving it at liberty to do or not to do it."

He then suggested that the time for each census should be fixed and that "the representation be regulated accordingly."

All through the debate that followed it can be seen that it was the intention and the understanding of the convention that nothing was left to the discretion of future Congresses. It was definitely stated and so written into the Constitution that a census should be taken and that reapportionment immediately thereafter was binding and mandatory upon future Congresses. Mr. Randolph was quick to agree with Mr. Williamson's proposition and expressed his willingness that it be substitute for his own. He stated, "If a fair representation of the people be not secured, the injustice of the Government will shake it to its foundations."

Continuing, Randolph stated:

"What relates to suffrage is justly stated by the celebrated Montesquieu, as a fundamental article in Republican government. If the danger suggested by Mr. Gouverneur Morris be real, of advantage being taken of the legislature in pressing moments, it was an additional reason, for tying their hands in such a manner that they could not sacrifice their trust to momentary considerations. Congresses have pledged the public faith to new States, that they shall be admitted on equal terms. They never would nor ought to accede on any other. The census must be taken under the direction of the General Legislature. The States will be too much interested to take an impartial one for themselves."

Then followed a running debate as to the question of counting the colored folks or only three-fifths of them.

Several votes were taken as fixing the period between censuses. It will be remembered that in the original motion the committee's report left the time in blank. A motion to make it 15 years was voted down. Then a motion of 6 years and 20 years, respectively, was voted down, and finally 10 years was agreed upon, the vote being Massachusetts, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia voting in the affirmative and Connecticut and New Jersey voting in the negative. (My State, New York, on this and many other votes on the question was conspicuous by its absence.)

As I have just stated, when the Constitutional Convention agreed to fix the taking of the census every 10 years, and that there should be a reapportionment immediately thereafter, it was by no means intended that it should be left to the discretion, will, or caprice of any future Congress. The debate and the motions themselves indicate that it was intended to be mandatory, and even the opponents of the proposition left no doubt that they understood that the provision in the Constitution was mandatory upon future Congresses. Hence the bill before the House is not only timely and necessary in the face of the failure of past Congresses to do their duty by obeying the express mandate of the Constitution but entirely in keeping with the intent and desire of the framers of the Constitution to make it absolutely imperative that there shall be a reapportionment following the census every 10 years.

So the proposition now before us is this, Whether or not we are going to duck or whether or not we have courage to stand up and perform a constitutional duty. There is no doubt as to the meaning of the Constitution and that it is mandatory. Now is the time for every Member to stand by the Constitution. Now is the time for all who believe in real representative government to put all personal and political expediency aside and to vote for his country. [Applause.]

The CHAIRMAN. The time of the gentleman from New York has again expired.

Mr. RANKIN. Mr. Chairman, I yield three minutes to the gentleman from Texas [Mr. Box].

Mr. BOX. Mr. Chairman and gentlemen of the committee, I want to speak to one issue of fact that has been raised here this evening. As I stated a moment ago in a question to my colleague [Mr. RANKIN], the Assistant Secretary of Labor, Hon. Robe Carl White, in January, 1928, and Hon. Mr. Hull, the Commissioner General of Immigration, both testified before the Committee on Immigration and Naturalization that they had a survey made of the number of aliens illegally in the country. They did not pretend it was accurate but that it was a summary, and they both estimated that the number who had come into the country illegally prior to June 3, 1921, was 1,300,000 at that time.

At this point I quote, by permission of the House, from the testimony of Commissioner Hull, in the presence of and with the concurrence of Hon. Robe Carl White, Assistant Secretary of Labor.

Mr. HULL. * * * I think the surveys made by the district directors brought forth this fact. When I asked for it I divided it into two classes, those that came in before June 3, 1921, and those that came in since June 3, 1921. * * * Now you apply that on through the number of aliens that we know are in the country and you can

make a rough guess and it will run over 1,300,000. That, probably, is too many, but it may be right. It may be less; we do not know.

The CHAIRMAN. That would apply to all the people who are here and unable to prove legal entry into the United States?

Mr. HULL. And the payment of the head tax and inspection.

Mr. BOX. That is all prior to June 3, 1921.

Mr. HULL. They came in prior to June 3, 1921.

In an article in the Congressional Digest of May, 1928, at page 151, Commissioner General Hull said:

We have many aliens who are unlawfully in the United States. Various estimates have been made as to the number, some running as high as 3,000,000. Regardless of the number, the problem presented is enormous, and the danger to our institutions is real. These aliens illegally in the country are divided into several classes—those illegally here because at the time of their entry they were not entitled to enter the United States, which include those entering surreptitiously; those securing entry by means of false and misleading statements; and those who arrived as seamen and deserted their vessels or were discharged at the port of arrival and abandoned their calling; and those who were originally lawfully admitted, but have since become public charges or have been sentenced for the commission of one or more crimes involving moral turpitude or have done other things in violation of our hospitality.

Secretary of Labor Davis has been repeatedly quoted by the press as saying—I have not heard him say it at all—that we were getting them illegally at the rate of 1,000 per day since then. My own judgment is that that is an overstatement. I am also convinced that the number should be measured by the hundreds of thousands. I would make it about half what the Secretary of Labor makes it, and that would give us about 2,500,000 or 3,000,000 people illegally in the country.

Mr. FENN. Mr. Chairman, I yield five minutes to the gentleman from Michigan [Mr. MCLEOD].

Mr. McLEOD. Mr. Chairman, if the reapportionment bill passes the House to-morrow, as we confidently expect it to pass, I have no hesitancy in saying that for me the occasion will be the happiest during my service in Congress.

Being from the great State of Michigan, which with one or perhaps two exceptions has suffered more than any other State from the failure to reapportion upon the census of 1920, it is inevitable, I suppose, that I should abhor the injustice and humiliation that has been the lot of my fellow citizens in Michigan in being deprived of their rightful representation.

Being also for many years a Republican member of the Census Committee, which is charged with responsibility for legislation of this nature, I have had perhaps more occasion to speak and act with regard to reapportionment than have the vast majority of the Members of this body. I believe the records will bear out my statement that I have made probably a dozen speeches in Congress upon this subject. Naturally, after so much discourse, together with many arguments pro and con, there remains to be said hardly anything of a new or informative character. We are familiar with the provisions of the Constitution which make mandatory the reapportionment of the House at regular stated intervals. We are familiar with the circumstances of Congress's failure for nine years to reapportion. We are familiar with the provisions of this bill, as it is substantially the bill which was passed by the House in the last session. We are familiar with the evil conditions throughout the country which have resulted from the failure to reapportion. In the past I have designated this failure as one of the worst crimes it is within the power of Congress to commit, because it destroys the very foundation of representative government. After cool and solemn reflection I still maintain that this designation is correct.

I am strongly for this bill because it affords a safeguard against a recurrence of this crime—namely, the nullification of Article I of the Constitution. The enactment of such a law can not but be the most important measure in this decade, and one of the most important since the founding of our Government, because it seems to be the only sure way of keeping the House of Representatives truly representative of the people.

Congress can not absolve itself from blame for what has already been done. The opportunity to reapportion upon the census of 1920, as Congress should have done, is gone forever. A precedent has been established which can never be wiped out, but will always hang over this body as an invitation to selfish groups in Congress to yield to their own interests and selfish desires. The automatic provisions of this bill are a very wise administering of antidote to this kind of political poison.

If in the past I have given way to passion, if I have been overzealous in my utterances, if I have been unduly presumptuous in asking my colleagues to support proposals in behalf of reapportionment, I assure you it was only because of sincere loyalty to the cause and not due to any disregard for the feelings of my friends. If these charges are true, I ask forgiveness and I plead in extenuation that while mine has been the honor to represent a district approximately three times as populous as the average, according to the ratio of 1910, the 700,000 people in my district for the past eight years have been entitled to two and nearly three Representatives in the House—a more potent influence than their one humble servant possesses in our present unfortunate circumstances. If I could have done three times as much as I have done, I would only then be compensating for the additional Representatives which have been denied to us.

I am deeply sensible of the honor and the recognition which the House and many individual Members have accorded me in giving me the privilege of pleading the cause of reapportionment.

It is with profound gratitude that I observe the reapportionment bill coming within the next few hours to final successful passage. While it can not undo the harm that has been done during the past nine years, the good influence of this bill will be felt down through the promising years to come.

Our opportunity for redemption still remains. Both sides of the House must insist on the passage of this pending matter, practically in the same form as that of its original passage by the House.

In view of the fact that I have some time remaining, permit me to review briefly some of the discourse which has brought the question of reapportionment to an issue.

Mr. Chairman, this occasion marks the seventh time a reapportionment bill has been before the House since 1920. In a century and a half of American history the Congress has never before failed to perform its reapportionment duty as laid down in the Constitution.

Now, in the ninth year following the census of 1920 we succeed in getting a reapportionment bill before the House which has a good prospect of passage. But this bill does not operate under the census of 1920. So long has the performance of this duty been delayed and postponed that it is no longer feasible to reapportion under the census of 1920. With a new census less than one year away, it would be useless and foolish to reapportion on the basis of a census nine years old, especially when the dates of elections and other considerations make it impossible for any apportionment, whatever the basis, to take effect until after the next census will have been completed.

There is only one consideration, and in principle that is an exceedingly strong one, which would make it desirable to reapportion now under the census of 1920, even at this late date in the decennial period, if such action were not precluded by the aforementioned practical reasons; that consideration is one of precedent.

By providing now for reapportionment on the basis of the 1930 census, we are attempting to retrieve the honor and respectability of the Congresses sitting between the years 1920 and 1928 with regard to the census of 1920. Those Congresses have perpetrated a great wrong, a crime against the Constitution. Those who oppose reapportionment have set themselves up as superior to the Constitution, from which they derived their own authority, by not obeying the mandate to reapportion Congress every 10 years.

I have been a Member of the House throughout most of this period of which I have been speaking. I know that the lapse of duty on the part of Congress was accomplished over the vigorous protests of many individual Members. I will say that individually there is not a finer or more conscientious man living than most of those who guide the public affairs of the Nation here in the Halls of Congress. Yet collectively these same men have succumbed to a condition which has made a large blot on the otherwise shining shield of Congress. I would not say that anyone is particularly culpable, yet, all things considered, there is no denying that Congress has failed to abide by the Constitution.

Such uninvited and unwelcome lassitude in Congress must be the result of new conditions or the operation of new forces in our national life over which up to the present time we have had no control. If these new conditions or forces were capable of forcing the abandonment of the 1920 census, thereby jeopardizing the continued progress of representative government, it is time we analyzed carefully the characteristics of this new monster and learned how to combat it. If it should defeat this bill before us to-day and Congress would be forced to let reapportionment go over until after the census of 1930, there are many sober-minded men who believe that nothing short of revolution could restore representative government to the people. If the fact that 11 States would lose representation under the census of 1920 can force a delay or abandonment of the reapportionment principle of the Constitution for 10 years, then

the taking of a census which shows that 17 States would lose representation, among them some of the most powerful in the Union, can only make matters infinitely worse. The future is dark indeed if we can not overcome self-interest for the sake of the common welfare of our country.

It has been said that reapportionment has been delayed because the census of 1920 was not accurate, because the Congress could not agree whether the size of the House should be further increased or not, because the reapportionment bill offered was an attempt to bind a future Congress, because the bill was anticipatory legislation, because the bill delegated powers.

The reapportionment bill which is offered is not unconstitutional in any particular, and the features of it which are novel in the construction of a reapportionment bill were deliberately made so, because a majority agreed that such innovations were necessary to meet new conditions. If the bill which the committee has reported does not meet the approval of the House in every particular, it can be amended, and the Congress, as well as the country, must abide by the will of the majority. This is in accordance with our plan of government. But the thing which can not be reconciled with American sense of justice and of government by the people is that Congress should be content to go year after year without passing any reapportionment bill.

Whenever these spurious arguments against the constitutionality or the wisdom or the justice or the necessity of any particular bill succeeded temporarily, we have dropped the subject like a hot iron, and Congress has closed its eyes to the greater injustice and the greater unwisdom of ignoring the first principle written into our Constitution. What we should have done and what we must do now is to remain at the task of restoring representation in proportion to population until we accomplish it. Let all else wait. Ordinary legislation is of less importance than the preservation of the foundation of our Government. Just as it was necessary in the beginning to call a constitutional convention and invest a document of fundamental principles with the solemn approval of the sovereign people before a Congress could legislate even for the necessities of national life, so it is necessary to-day to observe fundamentals before attempting to perform the routine duties of the Nation's business.

When the Revolutionary War turned into glorious victory, the Continental Congress sought to raise money to pay the expense of the Government. While the heroic American Army under General Washington, on the verge of riot due to misunderstanding, waited, or rather growled impatiently for their pay, even for food and clothing and the right to go home to their families and their farms, Congress could not legislate for them because it had not the authority. Could there have been any greater necessity than that? Yet the stalwart Americans who founded this country believed in principle above life, above property, above everything else. They had fought a war to establish the truth of the principle of "government only with the consent of the governed." Therefore—come riot, come what might—the Continental Congress steadfastly held to the principle that before governing the people the Legislature must first get the consent of the governed through a constitutional convention.

The very first condition upon which the Americans of Revolutionary days consented to be governed by Congress was that they should have Representatives in the governing body in proportion to their numbers in the several States. This condition is evidenced by Article I, section 2, of the Constitution. Have we kept faith with them? Can we justify Congress in the least for setting aside the question of reapportionment to discuss routine legislation? No. Not even for all the appropriation bills necessary to run the Government. Reapportionment is the most fundamental thing in American Government. It is entitled to come first and must be kept first.

Many things are important which do not partake of the nature of fundamental law. It is very impotrant that appropriation bills be passed with precision in order to provide in advance for the operation of the governmental agencies in an orderly fashion during the coming year. But is it not of far greater consequence whether we have a representative republican government or an oligarchy Is it not of far greater consequence that we avoid throwing the country into a system of rotten boroughs and gerrymanders which might bring about destructive civil strife? Is it not of far greater consequence to preserve the ideal of justice and equality in government than it is to gratify some desire for temporary material advantage?

Perhaps in the future the portions of the population whose Representatives have sacrificed everything to their selfish interests in insisting upon keeping every one of their Representatives in the face of population changes may have occasion to call upon the principle of abstract justice. They may not always be on the side of might; they should recognize the right.

The States of California, Michigan, Ohio, Connecticut, New Jersey, North Carolina, Texas, and Washington have not set up their selfish interests against the selfish interests of their opponents. They have called attention rather to the necessity of abiding by the rules laid down in the Constitution to preserve order and promote the common welfare.

Between matters of narrow local interest, general rules of government must necessarily operate to the disadvantage of some and the advantage of others. But such local advantages are short lived and in a few years may be completely reversed. They should not be the means of fomenting permanent discord. So long as we are satisfied that the general rules of government are founded in truth and justice, we should submit to them willingly, even though in a narrow sense it goes against our interests. In a broader sense the best interest of anyone or any group is to preserve the Constitution. If we revert to the law of the jungle, only the strongest will survive, regardless of right and justice. He who is stronger to-day may be weaker to-morrow.

The above-named States, by their Representatives, have repeatedly come to Congress and stated their case with admirable patience and forbearance. They have pointed to the census of their population taken by an impartial and disinterested enumerator. They have called attention to the fundamental law that Representatives shall be apportioned among the States every 10 years in proportion to their respective numbers. They have asked Congress to reapportion the Representatives accordingly. They have now suffered the discrimination against them to continue for one entire decennial period. They demand that reapportionment be made and that the law also include provisions for doing away with such criminal neglect of duty in the future as Congress has been guilty of since 1920.

Daniel Webster, as early as 1832, stated with characteristic force and aptitude the problem of reapportionment. Speaking on the apportionment bill of that year, he said:

> This bill, like all laws on the same subject, must be regarded as of an interesting and delicate nature. It respects the distribution of political power among the States of the Union. It is to determine the number of voices which, for 10 years to come, each State is to possess in the popular branch of the Legislature. In the opinion of the committee, there can be few or no questions which it is more desirable should be settled on just, fair, and satisfactory principles than this; * * *.
>
> Representatives are to be apportioned among the States according to their respective numbers; and direct taxes are to be apportioned by the same rule. The end aimed at is that representation and taxation should go hand in hand. But between the apportionment of Representatives and the apportionment of taxes there necessarily exists one essential difference. Representation, founded on numbers, must have some limit; and, being from its nature a thing not capable of indefinite subdivision, it can not be made precisely equal.
>
> The Constitution, therefore, must be understood not as enjoining an absolute relative equality—because that would be demanding an impossibility—but as requiring of Congress to make the apportionment of Representatives among the several States according to their respective numbers as near as may be.
>
> Congress is not absolved from all rule, merely because the rule of perfect justice can not be applied.

The foregoing statements of the great Webster are as true in condemnation of failure to pass any apportionment bill as they are in opposition to one at variance with the rule of the Constitution in some particular.

That the time-honored methods of securing apportionments were not satisfactory is amply attested by historical documents. The methods of government must, like all other branches of human activity, keep pace with the advancement of learning and developments in up-to-date practice if they are to survive. Modern conditions require that some schemes be devised and adopted by Congress which will insure: First, that Representatives will be apportioned; second, that the apportionment will be equitable and proportionate to numbers, as near as may be; and third, that the House shall be kept within the limits of a reasonable and practicable size.

The bill before the House meets these requirements. By providing for an automatic apportionment according to a fixed rule after each census, prompt apportionment is assured, at the same time affording the House ample opportunity to change the rule by affirmative action after any particular census that it desires. The rule of calculation is the same which has been used in the recent past with satisfaction. Since it has been agreed upon in advance of the census and must be applied with mathematical exactness in each case, it can not conceivably result in partiality to any State or group of States. Lastly it represents the only practicable scheme for accomplishing apportionment, and at the same time keeping the House from further exceeding the limits of desirable size. The

experience of years has proved that once a census is taken and political expediency becomes the ruling force, no reapportionment bill which meets the three aforementioned requirements can be enacted, except upon the principles of this bill.

During the course of debate on this bill there has been in the House evidence of what John Quincy Adams once called "the instinctive expedient of unsteady minds." That is, we have been treated to the spectacle of some Members professing to be for reapportionment but at the same time against every measure proposed for carrying it out.

We have here a bill which is the best that your committee can devise, presumably. I would say that the committee has given its best efforts to the matter. It is unquestionably a good bill. In comparison with the hit-or-miss methods of selecting a basis for apportionment on past occasions, this bill is a model of scientific accuracy and impartiality. Moreover, it is modern enough to meet the new conditions brought about by the controversy over the size of the House. In my opinion, all the House needs now is the same degree of perseverance and determination to see an apportionment bill passed, that Members of Congress had in the early days of American history.

To illustrate the perseverance to which I allude, I would like to describe briefly the procedure in the House, upon the apportionment bill of 1842. The bill was reported on January 22, 1842, specifying a ratio of 63,000 to each Member. A debate of two hours was started. Representative Johnson moved to recommit the bill to a committee of one Member from each State; but the motion prevailed to refer it to the Committee of the Whole on the state of the Union and make it the special order of the day for the first Tuesday of February, and every succeeding day till the passage of the bill.

When the bill was called up, the committee ratio was stricken out and 59 different substitutes were moved by 82 different Members on the same day; 6 more substitute numbers on the following day. The bill was debated intermittently, as the special order of business until the 3d of May, 1842, when it was taken from the Committee of the Whole on the state of the Union and passed by the House. I might add that this was the occasion when the requirement that the States elect their Representatives by districts was apparently first enacted. It was the first time major fractions were counted as entitling a State to an additional Representative.

How are we to act in the light of such zeal for prompt reapportionment? Certainly, we should not be content to vote once upon a bill each session and then dismiss the subject indefinitely. We can justify no action except perseverance at reapportionment until a bill is passed.

The debates upon the question of reapportionment have always been among the most severe and acrimonious. Had it not been for the fact that prior to 1920 the House has always resorted to the unhappy expedient of increasing the number of Representatives to whatever proportions was necessary to overcome the opposition, it is more than likely that an impasse would have been encountered years ago.

As a further commentary upon the importance of reapportionment and the historic methods of accomplishing it, let me quote from the Memoirs of John Quincy Adams, in which Adams gives an account of the debates upon the apportionment bill of 1832, which occurred while he was a Member of the House, subsequent to his term as President of the United States:

January 10, 1832: Polk, of Tennessee, called up the bill for the apportionment of representation under the Fifth Census. It was referred to a Committee of the Whole on the state of the Union, Michael Hoffman in the chair. The bill was reported with the ratio of representation fixed at 48,000. A motion was made by Robert Craig, of Virginia, to strike out 48,000, without proposing to insert any other number. This gave rise to a long debate on a point of order, which grew into a snarl, till near 4 o'clock, when the House adjourned.

January 12, 1832: The apportionment bill was taken up in the Committee of the Whole. Howard made his speech for postponing the operation of the new apportionment bill till after the next presidential and congressional elections. He met no support. Armstrong, of Pennsylvania, Kerr, Craig, Polk, Beardsley spoke successively against it, till at last McDuffie rose and begged that gentlemen would make no more speeches on that side. If there was another Member in the House who thought with the mover of the amendment, he should be happy to hear him, but as it was apparent there would not be 10 votes in the House to sustain the motion it was to be hoped nothing more would be said against it. Howard was more abashed with this short speech than by all the arguments against him and withdrew his motion. J. W. Taylor then moved 59,000—lost; then 53,000—lost; Craig moved 51,000—lost; Letcher, of Kentucky, moved 47,000—lost; 46,000 was also lost. The bill was then reported to the House without amendment. Wickliffe moved that it should be recommitted to a select committee of one Member from each State, with instructions to strike out 48,000 and to leave the number in blank. The House then adjourned about 4.

January 30, 1832: The apportionment bill was taken up. Wickliffe's proposition to recommit the bill to a committee of 24, 1 from each State, with instructions to strike out 48,000 and leave blanks, was rejected by yeas and nays—114 to 76. Mr. Hubbard then moved to strike out 48 and insert 44. This was last and desperate chance. Wickliffe advised him not to specify the inserting number, because, he said, he would certainly lose it. But Hubbard insisted. As the question was about to be taken, Burges moved an adjournment, which was carried. The number 48,000 is so entrenched in the bill that it is obviously impossible to dislodge it.

January 31, 1832: The apportionment bill was taken up. On motion to strike out 48,000 Slade made a long and sensible speech; Arnold, Kerr, Wilde short ones. The yeas and nays were taken—94 for and 99 against striking out. Hubbard then moved to strike out 48,000 and insert 44,500, upon which Wilde moved and carried an adjournment.

February 1, 1832: The hour expired and the apportionment bill was called up. Hubbard replied at some length to the arguments against his motion; Sutherland and McCarty of Indiana spoke against him. I received a note in pencil from the Speaker urging me to sum up in reply. It was 4 o'clock and great impatience in the House for the question. I made a very short and incoherent speech, saying not half what I intended and omitting several most forcible positions, which occurred to me after it was all over. I recurred to the Constitution and to a calculation showing that the committee which fixed the ratio at 48,000 had taken special care of their own States. It brought up Barstow, of New York, to vindicate himself and Polk to refute my positions. The question was taken by yeas and nays and carried—98 to 96—to strike out 48,000 and insert 44,000. Polk then told me that he would give up the question. Holland, of Maine, who was on the committee, came to me with a calculation to show that Maine was better off with 44,000 than with 48,000. Evans had been all along with us and spoke this day for 44,000. Wickliffe thanked me for my calculations and said he had intended to present the same himself. Cambreleng congratulated me upon our success. I had despaired of the vote and was overjoyed at the event. The whole bill was to be modified in conformity to the change in the ratio, and the House adjourned at half past 4. I rode home rejoicing, though much dissatisfied with my own performance.

February 2, 1832: The hour expired and the apportionment bill was taken up. Mr. McKennan moved a reconsideration of the vote of yesterday. The vote of reconsideration was taken, and prevailed by 100 to 94. Two or three were absent who voted with us yesterday and there were two or three deserters. The reconsideration placed the bill just where it was before the vote was taken yesterday; that is, it restored the number 48,000, with the motion of Mr. Hubbard to strike it out and insert 44,000. Allan, of Kentucky, moved to recommit the bill with instructions to reduce the ratio so that the number of the House would not exceed 200 Members. He asked the yeas and nays; rejected. The House then adjourned. Mr. Burgess told me that the reconsideration of this day was the effect of interference by some of the Senators.

February 8, 1832: The apportionment bill was taken up. The question upon Mr. Kerr's motion to strike out 48,000 and insert 44,000 as the ratio was about to be taken by yeas and nays, and as it appeared to be the last opportunity for pressing the smaller number, I again addressed the House in a very confused and ill-digested speech, presenting, however, some considerations which had not been touched and recurring particularly to the journal of the convention of 1787 to show the principles upon which the representation had been established in the Constitution.

As usual, I omitted half what I had intended to say and blundered in what I did say. I was answered at some length by Coulter, of Pennsylvania; Clay, of Alabama; and Polk, of Tennessee; and sustained by Wayne, of Georgia, and Letcher, of Kentucky, who tried with success the good effect of joking. The question was taken by yeas and nays and resulted in a tie—97 for and 97 against. The Speaker decided in favor of the change, and for the second time we carried our vote. But we could not get the bill engrossed. Taylor moved to recommit the bill, instructions to strike out 44,400 and insert 53,000, and took the yeas and nays. His motion was rejected. McDuffie moved that the bill should be engrossed; but Mitchell, of South Carolina, moved to adjourn, and it was carried. So we shall lose it again to-morrow.

February 9, 1832: The apportionment bill was taken up, and motion upon motion was made to strike out the numbers of 44,400 agreed upon yesterday, and the yeas and nays were taken six or seven times. A call of the House was demanded, and they prevailed upon Clayton, of Georgia, to move a reconsideration of the vote of yesterday, and then the House adjourned.

February 14, 1832: The apportionment bill was then taken up. Mr. Clayton withdrew his motion for a reconsideration of the motion by which 44,400 had been adopted as the ratio. Evans of Maine's motion to reduce the ratio to 44,300 was then carried by yeas and nays, after which Polk, the chairman of the committee which had reported the bill, moved a recommitment of the bill, with instructions to strike out 44,300 and insert 47,700.

The effect of this was to give an additional Member to each of the three States of Georgia, Kentucky, and New York, and it bought the votes of a sufficient number of the delegations of those States to carry the majority. It had been settled out of doors, like everything else upon this bill. It prevailed by yeas and nays—104 to 91.

February 15, 1832: I passed an entirely sleepless night. The iniquity of the apportionment bill and the disreputable means by which so partial and unjust a distribution of the representation had been effected agitated me so that I could not close my eyes. I was all night meditating in search of some device, if it were possible, to avert the heavy blow from the State of Massachusetts and from New England. I drew up this morning a short paper to show to the Members of the Pennsylvania delegation, appealing to their justice and generosity as umpires upon this question. Walking up to the Capitol I met Mr. Webster and spoke to him upon the subject. He said he would make a dead set against the bill in the Senate.

In the House the bill was taken up * * *. When the report was received an amendment was moved to substitute 45,500 for 47,700. McDuffie moved the previous question upon the plea of saving time and useless debate, but he could not carry it * * *. Many numbers, down to 42,000 and up to 59,000, were moved and rejected; and, lastly, the number reported by the committee, 47,700, was adopted and the bill ordered to be engrossed for a third reading. I hung my harp upon the willow.

Thus former President John Quincy Adams resigns himself to what he believed were the iniquities of an unjust apportionment bill. The thing which is most striking about the early proceedings just described is that, while all the Members felt very keenly on the subject, and although it was customary then to settle the actual ratio of the bill by taking innumerable votes in the House as well as in the committee they made reapportionment the special order of business and stayed at it until a bill was agreed upon.

Adams was a contemporary of the men who wrote the Constitution and who started our theories of government in practice in America. The relative importance of apportionment in his mind, and the minds of his contemporaries, is clearly shown in the fullness of his notes. He was a former President of the United States, which gives peculiar significance to his utterance that the inequity of the apportionment laws filled him with dark forebodings for the future of the Republic.

On March 1, 1832, Adams had said:

I should hope that a great and inveterate defect in the apportionment laws might be remedied. I would not prematurely despair of the Republic, but my forebodings are dark, and the worst of them is in contemplating the precipice before us.

In spite of their strong State loyalties and disagreements, our predecessors of 1832 never delayed the duty of reapportionment more than two years from the date of the census. They would have been horrified indeed, and filled with forebodings even darker than John Quincy Adams's, had they ever contemplated passing one entire decennial census without a reapportionment.

If we are not to confess that the passage of time since 1787 has weakened the American passion for justice and debased our conception of the relative value of things, we must of necessity give some thought to principles of government.

In my opinion, the time is not far distant when a new spirit will be injected into the proceedings of Congress. The lines of thought of men of vision will lead to the necessity of setting up, if not a party, then a group in Congress—a bloc, if you please—which will at all times give first consideration to the fundamental principles of the Constitution.

Such a group might be called a constitutionalist party, because it would have the principal qualification for a great national party, namely, adherence to a set of principles of government. Its duty would be not to seek additional amendments to the Constitution but rather to prevent the enactment of proposed amendments which are foreign to basic principles of government, to keep alive the thoughts and plans embodied in the original covenant, the most promising historic governmental document ever recorded. The duty of such a party would be to prevent the waning away of the Constitution through improper teaching or lack of teaching; to purge the supreme law of matters which are properly only subject matter for mere legislation.

The constantly growing tendency to place everything in the Constitution is evidence of a growing deficiency in moral courage. What we can not do by our own strength we seek to unload upon the shoulders of the Constitution. Such weakness and shortsightedness can result only in disaster. What is the good of having a supreme law of the land if every group and faction succeeds in borrowing its dignity in a vain effort to enforce universal respect for some particular pet rule of social conduct, which by comparison is of trivial importance. Under such conditions there would soon be no respect for any part of the Constitution. As a matter of fact, I think the apathy toward the violation of Article I of the Constitution can largely be attributed to overloading the document with heavy-handed foreign characteristics in the amendments. A supreme law to live and guide a country to a great destiny must be confined to things of supreme importance. [Applause.]

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104. Aswell, James B. The reapportionment bill. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong. 3d sess., v. 60, no. 35 (current file): 1689–1691.

105. Barbour, Henry E. Apportionment of representatives. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1695–1696. Also printed separately.

106. Bee, Carlos. Reapportionment. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1692–1694.

107. Black, Eugene. The present membership of 435 is large enough. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1704–1705.

108. Blanton, Thomas L. Decrease the membership of the House instead of increasing it. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1697–1698.

109. Brinson, Samuel M. Some of the disadvantages attached to the proposed increase of the membership of the House. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1691–1692.

110. Caraway, Thaddeus H. Why should the House membership be increased? Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1704.

111. Clark, Champ. Proposed reapportionment bill. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1700–1701.

112. Esch, John J. The people of the States are not so much interested in the number of their members as in the efficiency of their members. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1701–1702.

113. Fairfield, Louis W. There is no reason why the size of the House should be increased. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1688–1689.

114. Fess, Simeon D. Representation. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1707.

115. Gard, Warren. Reapportionment. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, part 2 (bound file): 1651.

116. Garrett, Finis J. I shall vote for the proposition to retain the membership at the number as at present fixed. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1706–1707.

117. Glynn, James P. A House of 435 Members is precisely as representative as one of 483. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1702.

117a. Greene, Frank L. Proportionate representation. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1702.

118. Hardy, Rufus. The proposed reapportionment bill. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1698–1699.

119. Hersey, Ira G. Shall the House of Representatives cease to be a representative body? Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 37 (current file): 1845–1847.

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129. Peters, John A. Principles of representation in Congress. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 35 (current file): 1705–1706. Also published separately.

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134. Stephens, Hubert D. Reapportionment bill. Speech in the House, Jan. 18, 1921. CONGRESSIONAL RECORD, 66th Cong., 3d sess., v. 60, no. 37 (current file) : 1847–1849.

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159. Nelson, John M. The Constitution evaded to increase the House. Speech in the House, Oct. 14, 1921. CONGRESSIONAL RECORD, 67th Cong., 1st sess., v. 61, no. 134 (current file) : 7314–7316.

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177. Cannon, Clarence. Reapportionment. Speech in the House, Apr. 8, 1926. CONGRESSIONAL RECORD, 69th Cong., 1st sess., v. 67, no. 96 (current file) : 6896.

178. Cooper, Henry A. The privileged status of an apportionment bill. Speech in the House, Apr. 8, 1926. CONGRESSIONAL RECORD, 69th Cong., 1st sess., v. 67, no. 96 (current file) : 6894–6895. Also published separately.

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180. Gibson, Ernest W. Methods of reapportionment. Extension of remarks in the House, Apr. 7, 1926. CONGRESSIONAL RECORD, 69th Cong., 1st sess., v. 67, no. 95 (current file) : 6840.

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183. Snell, Bertrand H. No mandatory provision in the Constitution which provides for immediate apportionment. Speech in the House, Apr. 8, 1926. CONGRESSIONAL RECORD, 69th Cong., 1st sess., v. 67, no. 96 (current file) : 6887–6888.

184. Tilson, John Q. Reapportionment. Speech in the House, Apr. 8, 1926. CONGRESSIONAL RECORD, 69th Cong., 1st sess., v. 67, no. 96 (current file) : 6895.

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187. Barbour, Henry E. Reapportionment. Speech in the House, Mar. 2, 1927. CONGRESSIONAL RECORD, 69th Cong., 2d sess., v. 68, no. 69 (current file) : 5327–5328.

188. Bulwinkle, A. L. The so-called apportionment bill. Extension of remarks in the House, Mar. 2, 1927. CONGRESSIONAL RECORD, 69th Cong., 2d sess., v. 68, no. 69 (current file) : 5418.

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190. Greenwood, Arthur H. Membership of the House of Representatives. Speech in the House, Mar. 2, 1927. CONGRESSIONAL RECORD, 69th Cong., 2d sess., v. 68, no. 69 (current file) : 5328.

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192. Lea, Clarence F. Reapportionment. Extension of remarks in the House, Mar. 3, 1927. CONGRESSIONAL RECORD, 69th Cong., 2d sess., v. 68, no. 72 (current file) : 5815–5816.

193. Linthicum, J. Charles. Apportionment of Representatives in Congress. Extension of remarks in the House, Mar. 2, 1927. CONGRESSIONAL RECORD, 69th Cong., 2d sess., v. 68, no. 69 (current file) : 5412.

194. Lozier, Ralph F. Reapportionment. Speech in the House, Mar. 2, 1927. CONGRESSIONAL RECORD, 69th Cong., 2d sess., v. 68, no. 69 (current file) : 5326–5327.

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197. Rankin, John E. Reapportionment. Speech in the House, Mar. 2, 1927. CONGRESSIONAL RECORD, 69th Cong., 2d sess., v. 68, no. 69 (current file) : 5330.

198. Sosnowski, John B. Reapportionment. Speech in the House, Jan. 14, 1927. CONGRESSIONAL RECORD, 69th Cong., 2d sess., v. 68, no. 26 (current file) : 1679–1680.

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200. Tydings, Millard E. Reapportionment. Extension of remarks in the House, Mar. 2, 1927. CONGRESSIONAL RECORD, 69th Cong., 2d sess., v. 68, no. 69 (current file) : 5412.

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205. Barbour, Henry E. Apportionment of the Members of the House of Representatives. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9430.

206. Brigham, Elbert S. Reapportionment. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9443–9444.

207. Burton, Theodore E. Reapportionment. Speech in the House, May 17, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 131 (current file) : 9295–9296.

208. Celler, Emanuel. Apportionment. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9432–9433.

209. Chapman, Virgil. Apportionment. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9440–9441.

210. Clancy, Robert H. Reapportionment. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9435–9436.

211. Clarke, John D. Apportionment of Representatives. Extension of remarks in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9466.

212. Cochran, Thomas C. Reapportionment. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9438–9439.

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222. LaGuardia, Fiorello H. Apportionment of Representatives in Congress. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 133 (current file) : 9590–9502.

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225. —— Reapportionment. Speech in the House, May 17, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 143 (current file) : 10875–10884.

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227. McLeod, Clarence J. Apportionment. Speech in the House, May 24, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 138 (current file) : 10106–10108.

228. —— Reapportioning the Members of the House on the census to be taken in 1930. Speech in the House, May 17, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 131 (current file) : 9298–9299.

229. Mapes, Carl E. Reapportionment. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9444–9445.

230. Michener, Earl C. Reapportionment of Representatives. Speech in the House, May 17, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 131 (current file) : 9291–9292.

231. Moorman, Henry D. Apportionment of Representatives. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9434.

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234. Rankin, John E. Reapportioning under the census of 1920. Speech in the House, May 17, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 131 (current file) : 9296–9298.

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236. Rutherford, Samuel. The Constitution and reapportionment. Speech in the House, May 18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 132 (current file) : 9434–9435.

237. Thurston, Lloyd. Apportionment. Speech in the House, May 17, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 131 (current file) : 9305–9306.

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239. U. S. Congress. House. Reapportionment of Representatives. Debate in the House, May 17–18, 1928. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 131 (current file) : 9291–9309 ; no. 132 (current file) : 94330–9447.

240. Vandenberg, Arthur H. Reapportionment. Explanatory statement regarding Senate bill 4554, relating to reapportionment, and an editorial from the Detroit News. CONGRESSIONAL RECORD, 70th Cong., 1st sess., v. 69, no. 143 (current file) : 10789–10790.

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Mr. RANKIN. Mr. Chairman, I yield five minutes to the gentleman from Kansas [Mr. AYRES].

Mr. AYRES. Mr. Chairman, before entering into the discussion of the question of the constitutionality of the amendment that will be offered to exclude aliens in making the apportionment of Representatives, I want to call attention to some statistics showing the population in certain States, and also the foreign population in those States not naturalized. These statistics are based upon the last census taken, that of 1920, and show some rather interesting facts, more especially in view of some of the very able arguments that have been made during the consideration of this measure by Representatives from some of those States.

I do not want to be understood as claiming that any representative in either branch of Congress would be influenced in his consideration of this measure by reason of a large foreign population in his State, and particularly a large foreign population not naturalized. Certainly this could not be the case. No doubt it is just one of those strange coincidences that once in a while occurs, and no explanation can be made as to why it occurs. I want at this time to call your attention to the State of Massachusetts. According to the last census it had a population of 3,852,356, of which there were 629,227 foreigners not naturalized—over a half million. That was over nine years ago, and the good Lord only knows what it is at this time. That shows that at least 16 per cent of the population of Massachusetts was unnaturalized, while the State of Missouri had a population of 3,404,055, almost as much as Massachusetts, with only 78,772 not naturalized, or 2 per cent. With aliens excluded, Massachusetts stands to lose two Representatives, while under the proposed bill Missouri will lose two.

The State of Connecticut, the home of one of the fathers of this measure, which State is about as large as a good-sized Kansas county, had a population of 1,380,631, of which 233,634 were not naturalized. In other words, 17 per cent of the population of this little State was not naturalized. While the State of Kansas had 1,769,257, of which there were 48,509 not naturalized, or only 3 per cent. Connecticut stands to gain one Representative, while Kansas, with practically the same population and only 3 per cent as against 17 per cent unnaturalized, stands to lose one if aliens are counted.

Take the State of Michigan, in which so many of her Representatives are taking so much interest in this legislation. Michigan had a population of 3,668,412, of which 383,583 were not naturalized, or 10 per cent of her population; and from all reports there may be twice that number now. While the States of Nebraska and Iowa had a combined population of 3,700,392 and a combined foreign population not naturalized of 117,823, or 3½ per cent of their population. Under the present arrangement of counting the aliens Michigan stands to gain two Representatives, while the States of Iowa and Nebraska stand to lose one each.

The great State of California had a population of 3,426,861, of which there were 453,397 foreigners not naturalized, or 13 per cent. There is no way of telling how many have been added to this number of unnaturalized foreigners in that State by the bootlegging of Japanese into that country since 1920, and it must be remembered that this is a class of foreigners that can never be naturalized but can be counted in the enumeration for the purpose of apportionment. The State of Indiana, with just a little less population, that of 2,931,390, had a foreign population not naturalized of 84,977, or 3 per cent. The pending measure will allow California with her Jap population a gain of from two to six Representatives while Indiana will lose one.

I could make other observations along this line but what is the use. I repeat, I do not contend that this condition influences the Representatives from those States which will gain as shown by the proposed measure without a provision to exclude unnaturalized aliens; but I must say it has seemingly developed a lot of constitutional lawyers in those States. I suppose the same can be said of the Members in both branches of Congress from the States that stand to lose Representatives by counting aliens not naturalized.

Mr. Chairman, from the CONGRESSIONAL RECORD, it would seem that the opposition to this amendment developed in the body at the other end of the Capitol as being unconstitutional, is based principally upon a report from the legislative counsel of the Senate. The RECORD shows that he was asked to give his opinion by the following question:

> Whether legislation excluding aliens from enumeration for the purpose of apportionment of Representatives among the States is constitutional.

And his answer was that—

> It depends on whether the word "persons" as found in section 2 of the fourteenth amendment is to be construed to embrace aliens.

And after discussing at length what is meant by the word "persons," he concluded his report or opinion as follows:

> It is therefore the opinion of this office that there is no constitutional authority for the enactment of legislation excluding aliens from enumeration for the purpose of apportionment of Representatives among the States.

He might have added also that there is no constitutional authority against the enactment of legislation excluding aliens from the enumeration for the purpose of apportionment of Representatives among the States, and that in the absence of a provision of the Constitution prohibiting such legislation that the best writers on the Constitution as well as the Supreme Court of the United States have laid down the rule that where a general power is conferred or a duty enjoined, that the power necessary for the exercise of one or the performance of the other is also conferred. That is to say that such powers may not be specifically set out in the Constitution, but notwithstanding that fact, other powers than those expressly or specifically granted may be conferred by implication. Such authorities on the Constitution as Cooley and Story and others I might mention have held that—

> Under every constitution the doctrine of implication must be resorted to in order to carry out the general grant of power.

The question now under consideration is a good illustration of this rule. For instance the general power is conferred on Congress by the Constitution as well as the duty enjoined to provide for an enumeration upon which a fair and just basis may be found to make an apportionment "among the several States of Representatives according to their respective numbers." The Constitution specifically provides that in making that enumeration that Indians not taxed shall be excluded, and further provides that when the right to vote is denied a citizen of the United States the representation of such a State or States shall be reduced accordingly. The power to do these things is expressly granted. There is another power conferred, as well as a duty enjoined on Congress by implication at least, and that is to pass legislation that will further protect the citizens in each and every State of the Union in taking this enumeration and making this apportionment, and that is by a provision excluding all persons not naturalized when making the enumeration and apportionment.

The Constitution is silent on this question, as nowhere is the word "alien" mentioned in connection with the enumeration and apportionment, and while it is contended by some that Congress can not do this constitutionally, my answer is that Congress has the power to do so by implication as heretofore stated.

For illustration, the Constitution specifically authorizes Congress to pass legislation for an enumeration of the population every 10 years; but you may search the Constitution from the first to the last and nowhere can you find that Congress is given the power to make apportionment of the Representatives, but it has been doing this just as though it were a power expressly given, and why? Simply because it has been looked upon by Congress as a duty to perform. It is just as much of a duty to provide for a fair and just basis for such apportionment, and Congress has just as much power to do so as it has to make such apportionment. Mr. Story, in his work on the Constitution of the United States, in speaking of the powers of Congress, states:

> Whenever, therefore, a question arises concerning the constitutionality of a particular power, the first question is whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be whether it is properly an incident to an express power and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress can not exercise it.

No one can contend that the question of excluding persons in each State who are not naturalized, when counting the whole number of persons to ascertain the population for apportionment, is not properly an incident to the express power granted Congress by the Constitution; or but what it is necessary in

making a fair and equitable apportionment of Representatives among the several States.

One of the best definitions of the powers of Congress which may not be specifically delegated to it by the Constitution is given by Mr. Justice Story in the case of Prigg v. Commonwealth of Pennsylvania (41 U. S. 618). He said:

No one has ever supposed that Congress could constitutionally, by its legislation, exercise powers or enact laws beyond the powers delegated to it by the Constitution; but it has, on various occasions, exercised powers which were necessary and proper as means to carry into effect rights expressly given and duties expressly enjoined thereby. The end being required, it has been deemed a just and necessary implication that the means to accomplish it are given also; or, in other words, that the power flows as a necessary means to accomplish the end.

Thus, for example, although the Constitution has declared that Representatives shall be apportioned among the States according to their respective Federal numbers; and, for this purpose, it has expressly authorized Congress by law to provide for an enumeration of the population every 10 years; yet the power to apportion Representatives after this enumeration is made, is nowhere found among the express powers given to Congress, but it has always been acted upon as irresistibly flowing from the duty positively enjoined by the Constitution.

I can not believe that any of the profound constitutional lawyers in either branch of Congress will question the authority of Mr. Story in his work on the Constitution, or Mr. Justice Story in the opinion just read, or Mr. Cooley in his work on constitutional limitations, wherein he states:

In regard to the Constitution of the United States, the rule has been laid down that where a general power is conferred or a duty enjoined every particular power necessary for the exercise of the one or the performance of the other is also conferred. That other powers than those expressly granted may be, and often are, conferred by implication is too well settled to be doubted. Under every constitution the doctrine of implication must be resorted to in order to carry out the general grant of power.

Such interpretations of the powers conferred on Congress by these real and great constitutional lawyers have been followed by all of the courts throughout the land, including the highest tribunal, the Supreme Court of the United States, in construing legislation not specifically provided for by the Constitution. For instance, the Constitution is as silent as a tombstone on the question of expatriation, but Congress passed an act providing for expatriation, and in the case of Comitis v. Parkinson (56 Fed. Rept. 588) the court said:

There can be no doubt but that the department of government which, in the distribution of authority under the Constitution, has power over the subject of naturalization has it also over the subject of expatriation. The Constitution is silent on the subject of expatriation, but Article I, section 8, paragraph 4 provides Congress shall have power to establish a uniform rule of naturalization. Where the Constitution is thus silent as to who can denaturalize, that department which can naturalize must be held to have authority to expatriate.

The Constitution was silent on the question of the Federal Government providing for a bank at the time Mr. Chief Justice Marshall delivered his opinion in the case of McCulloch v. Maryland (17 U. S. 315). He said:

Among the enumerated powers we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the Articles of Confederation, exclude incidental or implied powers and which requires that everything granted shall be expressly and minutely described. * * * A constitution, to contain an accurate detail of all of the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American Constitution is not only to be inferred from the nature of the instrument but from the language. Why else were some of the limitations found in the ninth section of the first article introduced? It is also, in some degree, warranted by their having omitted to use any restrictive term which might prevent its receiving a fair and just interpretation. In considering this question, then, we must never forget that it is a constitution we are expounding.

This opinion, in all probability, has been referred to by courts and textbook writers more than any other decision.

In addition to what I have said regarding the implied power, I want to reiterate what I said at the beginning, that so long as there is no constitutional prohibition against it the courts have universally held that Congress has a large discretion in enacting legislation. Justice Harlan, in the case of Boske v. Comingore (117 U. S. 468) said:

Congress has a large discretion as to the means to be employed in the execution of a power conferred upon it, and is not restricted to "those alone, without which the power would be nugatory"; for "all means which are appropriate, which are plainly adapted" to the end authorized to be attained, "which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. Where the law is not prohibitive and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribed the judicial department and to tread on legislative ground."

Who can question this legislation? It was admitted by those constitutionalists in the other body when discussing this question the other day that it was a serious question if anyone could question the right of Congress to pass an act excluding aliens as provided by this amendment, but they claimed it would be unfair and that when a Representative in Congress took an oath to uphold the Constitution he should not resort to such methods as assisting in the passage of legislation the constitutionality of which would be in doubt but of which the court would not take cognizance in an action to test its constitutionality. This, no doubt, is a very dignified and exalted position for any representative in both branches of Congress to take. But my judgment is that there were just as good constitutional lawyers in Congress who were also just as conscientious in days gone by as there are at the present time. They voted for and passed many laws where "there was no constitutional authority for the enactment of such legislation." But such eminent jurists as Chief Justice Marshall, in construing such legislation, said that:

The sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consistent with the letter and spirit of the Constitution, are constitutional. Where the law is not prohibited and is really calculated to effect any of the objects intrusted to the Government, to undertake here to inquire into the degree of its necessity would be to pass the line which circumscribes the judicial department and to tread on legislative ground. This court disclaims all pretentions to such a power.

This doctrine has been followed by the judiciary from that day to the present. This means that the courts will not interfere with a question purely political, such, for instance, as excluding aliens from the count in enumerating the persons as a basis for apportionment.

In the case of Fong Yue Ting v. United States (149 U. S. 712), Justice Gray said:

In exercising the great power which the people of the United States, by establishing a written Constitution as the supreme and paramount law, have vested in this court, of determining, whenever the question is properly brought before it, whether the acts of the Legislature or of the Executive are consistent with the Constitution, it behooves the court to be careful that it does not undertake to pass upon political questions the final decision of which has been committed by the Constitution to the other departments of the Government.

In the case of Luther against Borden, the United States Supreme Court, in defining its duty on a political question, stated:

But, fortunately for our freedom from political excitements in judicial duties, this court can never with propriety be called officially to umpire in questions merely political. The adjustment of these questions belongs to the people and their representatives in the State or General Government.

That means that if Congress sees fit to enact a statute which provides for the exclusion of aliens in the count of population for apportionment it is a question belonging exclusively to the people and their representatives in Congress, and that no court has the power to act as an umpire in adjusting the question.

In conclusion I will call attention to a tolerably recent decision rendered by a distinguished jurist of my own State, Mr. Justice Brewer. In the case of Wilson v. Shaw (204 U. S. 30) was where a citizen undertook by injunction proceedings to prevent the Secretary of the Treasury from paying money to the Panama Canal Co. and the Panama Republic. The construction of the canal had been authorized by Congress and

money appropriated to meet the expenses incident thereto. Mr. Justice Brewer, in his opinion, said:

For the courts to interfere and at the instance of a citizen, who does not disclose the amount of his interest, stay the work of construction by stopping the payment of money from the Treasury of the United States therefor would be an exercise of judicial power which, to say the least, is novel and extraordinary. Many objections may be made to the bill. Among them are these: Does plaintiff show sufficient pecuniary interest in the subject matter? Is not the suit really one against the Government, which has not consented to be sued? Is it any more than an appeal to the courts for the exercise of governmental power which belongs to Congress?

Should we pass an act for apportionment in which it is provided that aliens should be excluded in the count, in the language of Justice Brewer, who can show sufficient pecuniary interest in the subject matter to maintain an action to contest the validity or constitutionality of the law? Could the court consider such an action other than an appeal to the courts for the exercise of governmental power which belongs to Congress? [Applause.]

Mr. FENN. Mr. Chairman, I yield the balance of the time on this side to the gentleman from California [Mr. SWING].

The CHAIRMAN. The gentleman from California is recognized for nine minutes.

Mr. SWING. Mr. Chairman and gentlemen of the committee, the debate this afternoon has been centered almost wholly around the reapportionment feature of this bill, because that is the feature which most directly concerns us and the States which we represent.

I would like, in the closing minutes of this session, to divert your attention to another phase of the bill—the taking of the census—and undertake to enlist your interest in the collection and publication of facts regarding the need for old-age pensions. Here is a class of people in whom we ought to be sympathetically interested, who possess no means and no power of speaking for themselves. They have no organization and no bloc to advance their welfare. Their economic condition and their personal pride prevent them from lifting their voice effectively in their own behalf. They are dependent wholly upon the welfare organizations of the country and those kindly disposed souls who are unwilling to see those broken with age suffer the blight of poverty for which in many instances they are not at all to blame.

I am not asking in this amendment for any commitment of the Congress to a Federal old-age pension. My present belief is that the closer the administration of old-age pension is kept to the beneficiary through the State and county authorities the better. However, there exists in the whole United States no agency other than the Census Bureau that can collect authentic and reliable information on this subject on which the legislatures of the various States can depend when considering the problem of the needy aged.

The next 10 years is going to see a great increase of interest in this great humanitarian movement. We, the richest nation in the world to-day and rapidly growing richer, are no longer going to be content to witness that tragedy of our civilization, the needy aged going down into the sunset of life, forgotten and alone and deprived not only of the comforts but of many of the actual necessities of life.

It is the irony of this day and age that as science is prolonging the span of human life our present industrial system is shortening the period of its productive usefulness.

The amendment that I intend to offer to-morrow at the appropriate place is as follows:

Proposed amendment authorizing and directing the Director of the Census to collect and publish statistics concerning the need for old-age pensions

That the Director of the Census be, and he is hereby, authorized and directed, in the making of the next decennial census, to collect and publish statistics concerning the need for old-age pensions, including the number of men and women who are of the age of 65 and over, who, singly or jointly, with their respective husband or wife, if their husband or wife is living, possess property of the value of less than $5,000 or an assured income less than what would ordinarily be received from $5,000 invested; the number of such men and women who are being cared for in charitable institutions of one kind or another; also the number of such men and women outside of institutions who are wholly and in part dependent upon public or private charity.

Mr. RANKIN. Can the gentleman give us any statistics as to the number of States that have such legislation?

Mr. SWING. I will insert a table showing that information. Prior to 1927 there were four States and the Territory of Alaska which had old-age pensions. In the 1927 legislatures two additional States adopted old-age pensions. In the legislatures which met the first of this year bills were introduced in the legislatures of 26 States. Four of the legislatures enacted them into law and in six others old-age pensions passed one house or the other. I predict that in the next 10 years this matter is going to be earnestly pressed as a worthy humanitarian movement in all the other States. What I would like is to get the facts before the country, so the legislatures can act intelligently upon the problem. What is the number of people over the age of 65 who, singly or jointly with their respective wife or husband, possess less than $5,000 worth of property or the equivalent thereof in an assured income; how many of them are being supported in charitable institutions; how many of them outside of charitable institutions are dependent in whole or in part upon public or private charity?

This information, I am assured, will be helpful to the legislatures in acting upon this matter. It will not be burdensome to the Government to collect, because, according to the last census, there were less than 5,000,000 people over the age of 65. The number of persons over 65 years has to be ascertained anyway. Two additional questions will gather the required information called for by my amendment.

Railroads and enlightened big business are more and more taking care of those who have had long continuous employment. Our Government is to-day pursuing a more liberal policy with those who have served it faithfully a long length of time, but you know and I know that there is to-day and that there must always continue to be seasonal occupations. There must always be great masses of common laborers who never can count on steady employment long enough to earn the right to an annuity. Then there are the aged who, not because they have been prodigal, not because they have been improvident, not because they have not been industrious, but through unfortunate investments, have lost their all. It is a humane thing, it is a wise policy, it is an economical arrangement to extend to them, through the State and the local subdivisions of the State a pension whereby they can live outside of public institutions as long as possible, because thereby they maintain their self-respect and are enabled to carry on some productive activity whereby to help support themselves until disease and old age finally make it necessary for them to go into hospitals for their final care.

I shall offer at the appropriate time an amendment which I think will in nowise encumber the taking of the census and which will secure and make public dependable and authentic information which will help the State legislatures make a wise and proper decision of this important public question. [Applause.]

Summary of State old-age pension laws

States that have old-age pensions	Year adopted	Maximum pension	Age limit	Property or income limit	Required residence within State (years)
Alaska	1923	$25 per month for men. $45 per month for women.	[1] 65 [2] 60	Has no sufficient means of support.	15
Montana	1923	$25 per month	70	$300 per year	15
Nevada	1925	$30 per month	65	$3,000	10
Wisconsin	1925	do	70	$3,000	15
Kentucky	1926	$250 per year	70	$400 per year or $2,500.	10
Colorado	1927	$30 per month	70	$3,000	15
Maryland	1927	do	65	$3,000	15
California	1929	do	70	$3,000	15
Minnesota	1929	do			
Wyoming	1929	do	65	$360 per year	15
Utah	1929	$25 per month	65	$300 per year	15

[1] Male. [2] Female.

Mr. McLEOD. Mr. Chairman, I ask unanimous consent to revise and extend my remarks.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. RANKIN. Mr. Chairman, the gentleman from New York [Mr. LAGUARDIA] in his attack on the laws of the State of Mississippi is certainly at variance with the authorities that he quotes. Senator BORAH, of Idaho, a year ago when these wet fellows who were dissatisfied with the prohibition law and were attacking the election laws of Mississippi made the same accusation against Mississippi that were made here to-day; Senator BORAH said that since this question had arisen he had read the constitution of every Southern State and had investigated the laws of every Southern State with reference to the

violation of the fourteenth and fifteenth amendments; that he had not found where a single one of those charges were justified. I make that statement because the gentleman from New York made the attack without giving me an opportunity to answer. [Applause.]

The CHAIRMAN. The Clerk will read the bill.

The Clerk read the first section of the bill.

Mr. FENN. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee determined to rise; and Mr. TILSON having taken the chair as Speaker pro tempore, Mr. CHINDBLOM, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill S. 312 and had come to no resolution thereon.

EXTENSION OF REMARKS ON THE CENSUS AND REAPPORTIONMENT BILL

Mr. RANKIN. Mr. Speaker, I ask unanimous consent that Members may have five legislative days to extend their own remarks on the bill under consideration.

The SPEAKER pro tempore. The gentleman from Mississippi asks unanimous consent that Members may have five legislative days to extend their own remarks on the census and reapportionment bill. Is there objection?

There was no objection.

MEMORIAL DAY ADDRESS

Mr. GARBER of Virginia. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD by inserting a memorial address that I made at the Congressional Cemetery, Washington, D. C., on the last Memorial Day.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. GARBER of Virginia. Mr. Speaker, under the leave to extend my remarks in the RECORD, I include the memorial address delivered by me at the Congressional Cemetery, Washington, D. C., May 30, 1929.

The address is as follows:

"On Fame's eternal camping ground
Their silent tents are spread,
And Glory guards with sacred round
The bivouac of the dead."

We meet to-day to pay tribute to the sacred memory of our dead. Our hearts are filled with a sorrow that can not be expressed in words, and so we bear fragrant flowers to speak for us. It is fitting that we who are living pause and do honor and homage to those who sleep because of their sacrifice. A nation bows in tears and grief to-day at the bier of those who laid down their lives that our country might survive. We who remain strew blossoms in affection over the green mound beneath which rest the ashes of the hero of many battle fields. We linger to-day in the silent cities of our dead throughout our country feeling that we stand on hallowed ground, for here sleeps the loftiest symbol of America's spirit of patriotism that found expression in the supreme sacrifice.

The tears of a grateful Nation consecrate anew this day the sacred resting places of our fallen comrades. The observance of this national Memorial Day from year to year in a most fitting and impressive manner brings to the attention of the entire Nation the large debt of gratitude, affection, and love which we owe to those who died that our country might live.

I would not attempt to-day to pay tribute to the inspiring courage and heroism of individuals. However well this has been done in song and story it has been most inadequately done, for the heroism of the human soul that lays itself on the altar of country sweeps into the realm of the spiritual, and any human effort that attempts adequately to appraise that heroism must indeed seem feeble! I would address myself to the more impersonal national aspects that lie back of Memorial Day.

"We who have faith to look beyond the tragedy of a world at strife,
And know that out of death and might shall come the dawn of ampler life,
Rejoice, whatever anguish rend the heart,
That God hath given you the priceless dower
To live in these great times, and have your part
In Freedom's crowning hour!

"That ye may tell your sons,
Who see the light high in the heavens, their heritage to take:
'I saw the powers of darkness take their flight,
I saw the morning break!'"

As we again to-day bind up the wounds of war with our sacred memories, our tributes of affection and love, we must dedicate our lives anew to the completion of the task for which they struggled. If our "dead shall not have died in vain" then, indeed, we who are doing reverence to their memories to-day must gather a new vision of devotion to the cause "for which they gave the last full measure of devotion." It is ours to live and make real the ideals for which they fought and died. And so, as we do honor to the memory of our sacred dead, may we remember to live for the principles for which they died.

The immediate causes lying back of the half dozen wars our country has fought have differed somewhat; and yet, in their final analysis, how similar. One time we speak of independence, and then of the preservation of the Union, and then we think of our rights and liberties and the compelling need of a world-wide democracy. But entering into all these causes and a vital part of them is the love and devotion of the human heart for the ideals and aspirations of country. The immediate causes of war may appear to be material, but always they are spiritual. Civilized peoples do not lay down their lives for the acquisition of things material, but rather for the preservation of things spiritual. Think you the millions of brave men sleeping in a thousand cemeteries to-day would have lain their lives on the altar of a material aggrandizement? No; it was their valor and patriotism, fired by a love and devotion to a great cause, that found expression in a sublime sacrifice that has forever made sacred the soil of our hundreds of battle fields at home and abroad.

We are wont to believe that our national idealism finds full and fitting expression in our Constitution. As defined in that immortal document, we are convinced that here is a democracy that challenges the admiration of the world. Throughout the late World War we thrust into that mighty conflict the flower of a nation's youth, the unlimited resources of a nation's treasury, in order to "make the world safe for democracy." And so, fighting with a valor victorious and a heroism unsurpassed by the soldiery of any war in history, our brave boys surrendered their lives for an ideal—that liberty and democracy might not perish from the earth.

This, indeed, was an example of supreme patriotism; but may I not remind you that there is a patriotism of peace no less important and no less compelling than the patriotism of war. If the roses which we bear to-day express feebly the homage in our hearts for those who fought and fell to make the world safe for democracy, we must live to make that democracy safe for the world. If our brave boys fought for their devotion to an ideal, then that ideal must find expression in days of peace.

I said a moment ago that our Constitution interprets our democracy. The first step then in constructive patriotism of peace is the promotion of an active, living respect for and obedience to that Constitution. No people can advance beyond its appraisement and appreciation of its own organic law, and its final measure of patriotism is its obedience to that law. We are developing to-day a type of so-called democracy that is unwholesome and unsafe for organized society in this or in any other country. We dare to scorn the provisions of a Constitution the preservation of which has cost the sacrifice of our fathers and brothers by the multiplied thousands. Living, it becomes our duty if we would respect our dead to make vital in our civilization, by precept and example, the ideals embodied in our law. The patriotism of peace cries out for this, and the voice of those sleeping pleads for it. The recent words of President Hoover will bear repeating in this connection:

"A nation does not fall from its growth of wealth or power. But no nation can for long survive the failure of its citizens to respect and obey the laws which they themselves make. Nor can it survive the decadence of the moral and spiritual concepts that are the basis of respect for law, nor from neglect to organize itself to defeat crime and the corruption that flows from it."

And so we should remember on this occasion that it becomes our duty to pay proper allegiance to our flag in days of peace no less than in the trying hours of war, by not only obeying the Constitution which it represents but that we must also charge ourselves with the duty of advancing that same obedience in society generally. Personal rights and privileges must yield to social rights and social welfare. In our social order, in the march of civilization, the rights and welfare of the individual must always be regarded in their relation to the rights and welfare of the larger groups, and so it should be said that all of our personal rights become related rights and our obligation to society grows very clear.

May I not, therefore, insist that if we would do proper honor to the memories of our sleeping loved ones to-day, we must catch a new vision of the spiritual ideals that brought courage and sacrifice to the hearts of those now silent in death. We must assess anew the moral values of life. We need to remind ourselves over and over that only the concepts of the spirit guarantee the security of a nation and the fruits of the spirit make the life of that nation beautiful and worth while.

Our brave ones have fought and died for our ideals. Shall you and I live for those same ideals? They fought that wars might cease, that peace might prevail. Are we supporting those ends in life? They tasted death that liberty, justice, and right might not perish. Does our patriotism prompt us to support those same principles in the daily conflicts of life? They suffered and died that peace and righteousness might prevail throughout the world. Is America doing her full measure to-day in making that ideal real? The more secure civilization is made in days of peace the more remote grows the danger of war.

The hope has been expressed that we have fought our last war. Men who experienced the horrors of the World War, more than any others, would have a permanent peace; but they would not choose that peace at any price. They who suffered most realize most profoundly that our institutions, our ideals, and our national honor must be preserved at any cost. As our brave boys in khaki fought to end wars so we should labor for a permanent peace.

As we study history we are impressed with the futility of the arbitrament of arms as a means of settling either civil or national difficulties. Finally, disagreements are adjusted around the council table. If reason and understanding are the final arbiters in the adjudication of controversies, may we not hope that at a very early day they will be the sole arbiters? This is demanded more and more by the thought of advancing civilization. The rapid development of science, evidenced by its marvelous discoveries and inventions, must be turned to constructive rather than to destructive ends.

I would suggest, briefly, two means looking to the assurances of peace. Until that golden day when the world shall become peace-minded, we should at all times fortify our country on sea and land with adequate defensive strength. There is no surer guarantee of peace to any nation than its right to declare to the world its ability to protect its own. To weaken our Nation's defense is unthinkable. Another movement in the interest of peace would be a provision for the drafting into service of our material resources. Certainly if we have the right to call to the colors the manhood and womanhood of our Nation, the field and the factory also should be required to make its contribution. In the awful exigencies of war, every resource, both life and property, should be brought to the Nation's service. And may it never again be possible, here or elsewhere, for business to profiteer at the expense of the suffering and sacrifice of human life. That will ever remain one of the dark pages of our history.

As our comrades sleep in their silent tombs, let us strew with gentle hands the fragrant flowers o'er them, with the full consciousness in our hearts that through to-day and all of our to-morrows their ideals in death must be our ideals in life.

"In Flanders fields the poppies grow
Between the crosses, row on row,
That mark our place, and in the sky,
The larks, still bravely singing, fly
Scarce heard amid the guns below.

"We are the dead; short days ago
We lived, felt dawn, saw sunset glow,
Loved and were loved, and now we lie
In Flanders fields.
Take up our quarrel with the foe!
To you from failing hands we throw
The torch; be yours to hold it high!
If ye break faith with us who die,
We shall not sleep, though poppies grow
In Flanders fields.

* * * * *

"Rest ye in peace, ye Flanders dead.
The fight that you so bravely led
We've taken up. And we will keep
True faith with you who lie asleep
With each a cross to mark his bed,
And poppies blowing overhead,
Where once his own life blood ran red;
So let your rest be sweet and deep
In Flanders fields.

"Fear not that you have died for naught.
The torch you threw to us we caught.
Ten million hands will hold it high,
And Freedom's light shall never die!
We've learned the lesson ye have taught
In Flanders fields."

ADJOURNMENT

Mr. FENN. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 28 minutes p. m.) the House adjourned until to-morrow, Tuesday, June 4, 1929, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

24. A communication from the President of the United States, transmitting records of judgments against the Government by United States district courts which require an appropriation for their payment (H. Doc. No. 25); to the Committee on Appropriations and ordered to be printed.

25. A communication from the President of the United States, transmitting records of judgments rendered against the Government by United States district courts in special cases (H. Doc. No. 26); to the Committee on Appropriations and ordered to be printed.

26. A communication from the President of the United States, transmitting list of judgments rendered by the Court of Claims which require an appropriation for their payment (H. Doc. No. 27); to the Committee on Appropriations and ordered to be printed.

27. A communication from the President of the United States, transmitting records of judgments rendered against the Government by the United States district courts, as submitted by the Attorney General through the Secretary of the Treasury (H. Doc. No. 28); to the Committee on Appropriations and ordered to be printed.

28. A letter from the Secretary of War, transmitting report from the Chief of Engineers on preliminary examination and survey of Baltimore Harbor and channels, Md. (H. Doc. 29); to the Committee on Rivers and Harbors and ordered to be printed, with illustrations.

29. A letter from the Comptroller General of the United States, transmitting report and recommendations to Congress concerning the claim of Allegheny Forging Co., Pittsburgh, Pa. (H. Doc. No. 30); to the Committee on Claims and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII.

Mr. HAWLEY: Committee on Ways and Means. H. J. Res. 80. A joint resolution authorizing the postponement of the date of maturity of the principal of the indebtedness of the French Republic to the United States in respect of the purchase of surplus war supplies; without amendment (Rept. No. 16). Referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. CRAIL: A bill (H. R. 3588) to make provision against the discharge or escape of oil into navigable waters and fixing penalties for violations thereof; to the Committee on the Merchant Marine and Fisheries.

By Mr. BRAND of Georgia: A bill (H. R. 3589) to authorize the removal of the bar of the statute of limitations in the case of credits and refunds of internal-revenue taxes; to the Committee on Ways and Means.

By Mr. HUDSPETH: A bill (H. R. 3590) to establish a national park in the State of Texas; to the Committee on the Public Lands.

Also, a bill (H. R. 3591) to create the Mexican border labor commission, and for other purposes; to the Committee on Labor.

By Mr. JAMES: A bill (H. R. 3592) to further amend section 37 of the national defense act of June 4, 1920, as amended by section 2 of the act of September 22, 1922, so as to more clearly define the status of reserve officers not on active duty or on active duty for training only; to the Committee on Military Affairs.

Also (by request of the War Department), a bill (H. R. 3593) to authorize an additional appropriation of $7,500 for the completion of the acquisition of land in the vicinity of and for the use as a target range in connection with Fort Ethan Allen, Vt.; to the Committee on Military Affairs.

Also (by request of the War Department), a bill (H. R. 3594) to authorize the acquisition of 1,000 acres of land, more or less, in settlement of certain damage claims and for aerial bombing-range purposes at Kelly Field, Tex.; to the Committee on Military Affairs.

Also (by request of the War Department), a bill (H. R. 3595) to authorize the payment of burial expenses of former service men who die in indigent circumstances while receiving hospitalization and whose burial expenses are not otherwise provided for; to the Committee on Military Affairs.

By Mr. CRAIL: A bill (H. R. 3596) to exempt veterans of the World War from payment of the fee for the issuance of a passport; to the Committee on Foreign Affairs.

Also, a bill (H. R. 3597) to assist by loans any person holding an honorable discharge from the military forces of the United States of America during any war; to the Committee on Ways and Means.

By Mr. STONE: A bill (H. R. 3598) authorizing the Secretary of Agriculture to aid in acquiring toll bridges and in maintaining them as free bridges, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. McCLINTOCK of Ohio: A bill (H. R. 3599) for the erection of a public building at the city of Dover, State of Ohio, and authorizing an appropriation of money therefor; to the Committee on Public Buildings and Grounds.

By Mr. CRAMTON: A bill (H. R. 3600) to amend section 5 of an act entitled "An act authorizing Maynard D. Smith, his heirs, successors, and assigns, to construct, maintain, and operate a bridge across the St. Clair River at or near Port Huron, Mich.," approved March 2, 1929, and being Public Act 923 of the Seventieth Congress; to the Committee on Interstate and Foreign Commerce.

By Mr. FISH: A bill (H. R. 3601) to amend the World War veterans' act; to the Committee on World War Veterans' Legislation.

By Mr. BRITTEN: Joint resolution (H. J. Res. 94) to increase the midshipmen of the Navy from the enlisted men of the Navy; to the Committee on Naval Affairs.

By Mr. HOWARD: Joint resolution (H. J. Res. 95) directing the Interstate Commerce Commission to make certain changes in the rate structure of common carriers by reducing the rate from all interior points to points of exportation on shipments of wheat similar to those now carried on shipments of steel from interior points to points of exportation; to the Committee on Interstate and Foreign Commerce.

By Mr. JONES: Joint resolution (H. J. Res. 96) directing the Interstate Commerce Commission to make certain changes in the rate structure of common carriers by reducing the rate from all interior points to points of exportation on shipments of wheat and cotton similar to those now carried on shipments of steel from interior points to points of exportation; to the Committee on Interstate and Foreign Commerce.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BOWMAN: A bill (H. R. 3602) granting an increase of pension to Mary A. Shell; to the Committee on Invalid Pensions.

By Mr. CABLE: A bill (H. R. 3603) granting a pension to E. Florence Morgan; to the Committee on Invalid Pensions.

By Mr. CANNON: A bill (H. R. 3604) granting an increase of pension to Mary Black; to the Committee on Invalid Pensions.

By Mr. CARTER of California: A bill (H. R. 3605) granting an increase of pension to Rose E. Van Horn; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3606) granting an increase of pension to Mary B. Haskell; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3607) granting a pension to Herman Lucken; to the Committee on Pensions.

Also, a bill (H. R. 3608) granting a pension to Mabel Leona Wattenbarger; to the Committee on Pensions.

Also, a bill (H. R. 3609) granting an increase of pension to May E. Clark; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3610) for the relief of William Geravis Hill; to the Committee on Naval Affairs.

By Mr. CHALMERS: A bill (H. R. 3611) granting a pension to Mary E. Rice; to the Committee on Invalid Pensions.

By Mr. COOKE: A bill (H. R. 3612) granting an increase of pension to Wilhelmina Hagen; to the Committee on Invalid Pensions.

By Mr. CROWTHER: A bill (H. R. 3613) granting a pension to Cecelia Roland; to the Committee on Pensions.

By Mr. EATON of Colorado: A bill (H. R. 3614) granting an increase of pension to Martin L. Payne; to the Committee on Pensions.

By Mr. FENN: A bill (H. R. 3615) granting an increase of pension to Ellen Martin; to the Committee on Invalid Pensions.

By Mr. GIBSON: A bill (H. R. 3616) granting an increase of pension to Jennie W. Perkins; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3617) granting a pension to Alice B. Putnam; to the Committee on Invalid Pensions.

By Mr. HOGG: A bill (H. R. 3618) granting an increase of pension to Mary L. Kniss; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3619) granting an increase of pension to Jennie Snook; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3620) granting an increase of pension to Lydia M. Surfus; to the Committee on Pensions.

By Mr. KORELL: A bill (H. R. 3621) granting a pension to Addie Bryan; to the Committee on Invalid Pensions.

By Mr. LOZIER: A bill (H. R. 3622) granting an increase of pension to Mary J. Thacher; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3623) granting an increase of pension to Samantha Midgett; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3624) granting an increase of pension to Margaret M. Matheny; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3625) granting an increase of pension to Ann M. Harford; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3626) granting an increase of pension to Martha E. Harlan; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3627) granting an increase of pension to Anna E. Hedges; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3628) granting an increase of pension to Sarah E. Sidebottom; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3629) granting an increase of pension to Mary E. Smith; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3630) granting an increase of pension to Louisa J. Kennedy; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3631) granting an increase of pension to Alice Sunderland; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3632) granting an increase of pension to Marilla Shipley; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3633) granting an increase of pension to Margaret Stone; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3634) granting an increase of pension to Hannah R. Smith; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3635) granting an increase of pension to Delilah A. Summers; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3636) granting an increase of pension to Melissa Hardin; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3637) granting an increase of pension to Jacob Myers; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3638) granting a pension to Anthony Harvey; to the Committee on Pensions.

Also, a bill (H. R. 3639) granting a pension to John E. Stringer; to the Committee on Pensions.

Also, a bill (H. R. 3640) granting an increase of pension to Fannie C. Hawkins; to the Committee on Invalid Pensions.

By Mr. MONTAGUE: A bill (H. R. 3641) granting an increase of pension to Mary Helena Dahn; to the Committee on Invalid Pensions.

By Mr. MOREHEAD: A bill (H. R. 3642) granting an increase of pension to Nancy Melton; to the Committee on Invalid Pensions.

By Mr. FRANK M. RAMEY: A bill (H. R. 3643) for the relief of Alfred W. Mayfield; to the Committee on Claims.

Also, a bill (H. R. 3644) for compensation in behalf of John M. Flynn; to the Committee on Claims.

By Mr. RAYBURN: A bill (H. R. 3645) for the relief of the estate of W. Y. Carver, deceased; to the Committee on Claims.

By Mr. SHORT of Missouri: A bill (H. R. 3646) granting a pension to Martha E. Tilman; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3647) granting a pension to John Garrison; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3648) granting a pension to Lucretia Davidson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3649) granting a pension to Nancy Ann Whitehead; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3650) granting a pension to John H. Holtzhouser, alias John H. Houltzhouser; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3651) granting a pension to Francis M Snider; to the Committee on Invalid Pensions.

Also, a bill (H. R. 3652) granting an increase of pension to Martha A. Davis; to the Committee on Invalid Pensions.

By Mr. SPROUL of Illinois: A bill (H. R. 3653) for the relief of Frank Martin; to the Committee on Claims.

Also, a bill (H. R. 3654) granting a pension to Florence K. Rowland; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

604. Petition of Department of Ohio, United Spanish War Veterans, Columbus, Ohio, favoring increase of pensions to Spanish War veterans; to the Committee on Pensions.

605. By Mr. CHALMERS: Petition requesting that the House Committee on Invalid Pensions be organized in order to permit action on the Robinson bill, providing for a pension of $50 per month for the widows of the Union veterans of the Civil War, at this special session of Congress; to the Committee on Invalid Pensions.

606. By Mr. EATON of Colorado: Petition of Roosevelt Camp No. 13, United Spanish War Veterans, R. H. Haverfield, commander, and I. L. Bailey, adjutant, Fort Collins, Colo., for speedy action on the passage and approval of the Knutson bill; to the Committee on Pensions.

607. Also, petition of a number of veterans who gave service in behalf of the United States in the war with Spain, the Philippine insurrection, or in the China relief expedition, for support of House bill 2562, which has been introduced by Congressman Knutson and referred to the Committee on Pensions; to the Committee on Pensions.